

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

OAK MORTGAGE CO, LLC and
ANTHONY DRAGANI

v.

FIDELITY NATIONAL TITLE
INSURANCE COMPANY, JOSEPH
MESSINA, OPTIMA PROPERTY
MANAGEMENT GROUP, LLC,
ANTHONY DEMARCO III,
ALTERNATIVE ABSTRACT, INC.,
ELIZABETH A. CHEESMAN,
KARLENE CHEESMAN
ADMINISTRATRIX FOR THE
ESTATE OF GLORIA CHEESMAN

FEBRUARY TERM, 2013

NO. 02540

COMMERCE PROGRAM

CONTROL NOs. 14030634 and
14021208

DOCKETED

APR 23 2014

C. HART
CIVIL ADMINISTRATION

ORDER

AND NOW, this 23rd day of April, 2014, upon

consideration of the motion for summary judgment of plaintiff, Oak Mortgage Company, LLC and the cross-motion for summary judgment of defendant, Fidelity National Title Insurance Company, and any responses thereto, it is hereby

ORDERED

as follows:

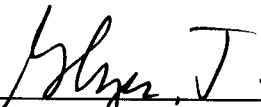
1. The motion for summary judgment of plaintiff, Oak Mortgage Co., LLC is **DENIED**.
2. The motion for summary judgment of defendant, Fidelity National Title Insurance Company, is **GRANTED** and plaintiffs' complaint is **DISMISSED**.

Oak Mortgage Company, L-ORDOP



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BY THE COURT:



GLAZER, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

OAK MORTGAGE CO, LLC and	:	
ANTHONY DRAGANI	:	FEBRUARY TERM, 2013
v.	:	
	:	NO. 02540
	:	
FIDELITY NATIONAL TITLE	:	COMMERCE PROGRAM
INSURANCE COMPANY, JOSEPH	:	
MESSINA, OPTIMA PROPERTY	:	CONTROL NOs. 14030634 and
MANAGEMENT GROUP, LLC,	:	14021208
ANTHONY DEMARCO III,	:	
ALTERNATIVE ABSTRACT, INC.,	:	
ELIZABETH A. CHEESMAN,	:	
KARLENE CHEESMAN	:	
ADMINISTRATRIX FOR THE	:	
ESTATE OF GLORIA CHEESMAN	:	

OPINION

GLAZER, J.

April 23, 2014

Before the court is the motion for summary judgment of plaintiff, Oak Mortgage Co., LLC, and the cross-motion for summary judgment of defendant, Fidelity National Title Insurance Company. For the reasons set forth below, plaintiff's motion for summary judgment is denied. Further, defendant's cross-motion for summary judgment is granted and plaintiffs' complaint is dismissed.

FACTS AND PROCEDURAL BACKGROUND

Plaintiffs, Oak Mortgage Company, LLC (hereinafter "Oak Mortgage") and Anthony Dragani (hereinafter "Dragani"), commenced the present action alleging claims for declaratory judgment pursuant to 42 Pa. C.S.A. § 7531, breach of contract, and bad faith against defendants. In 2011, plaintiffs were sued by the Estate of Gloria Cheesman (hereinafter "underlying suit")

alleging that plaintiffs were complicit in a mortgage scam in September of 2009. See Case Term No. 110901332. Specifically, the complaint in the underlying suit (hereinafter “Cheesman Complaint”) alleged that in or around August 2009, Gloria Cheesman (hereinafter “Cheesman”), now deceased, was facing foreclosure on her property located at 3444 Primrose Road, Philadelphia, Pennsylvania (hereinafter “the property”), when defendant Anthony Demarco (hereinafter “Demarco”) contacted her and offered to sell her property to defendant Joseph Messina (hereinafter “Messina”) through the company defendant Optima Property Management Group LLC (hereinafter “OPM”). Moreover, Cheesman would allegedly be allowed to stay in the property, making rental payments, and have the option to repurchase from Messina.

Oak Mortgage funded a loan in the amount of \$148,000 to Messina to purchase the property. On September 9, 2009, in connection with the closing of the property, defendant Fidelity National Title Insurance Company (hereinafter “Fidelity”), issued a Closing Service Letter (hereinafter “CSL”) to Oak Mortgage. The CSL states that Fidelity:

hereby agrees to reimburse you for actual loss incurred by you in connection with the Closing when conducted by the above named Issuing Agent (an agent authorized to issue title insurance for the Company) or the above named Approved Attorney ... and when such loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions to the extent that they related to (a) the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such title or lien; or (b) the collection and payment of funds due you; or
2. Fraud or misapplication of the Issuing Agent or Approved Attorney in handling your funds in connection with the matters set forth in numbered paragraph 1 above.

See motion for summary judgment of defendant Fidelity, Exhibit 1A. Further, the conditions and exclusions in the CSL provide that “[t]he Company shall not be liable hereunder unless notice of claim in writing is received by the Company within one year of the Closing.” Id.

The closing of the property occurred on September 15, 2009. Subsequently, Messina collected monthly rental payments of \$1,000 from Cheesman. However, the mortgage payments were never made and thus resulting in foreclosure. The Cheesman Complaint alleged that the loan application submitted to Oak Mortgage contained false information regarding the source of the down payment for the sale and misrepresented Messina’s ability to qualify for the loan, as well as a sham rental lease for the property in favor of an OPM employee. The underlying suit sought compensatory and punitive damages in excess of \$50,000 and asserted causes of action for fraud and negligence against Dragani, estoppel/detrimental reliance and vicarious liability against Oak Mortgage, and unfair trade practices against both.

Plaintiffs allege that pursuant to the CSL, defendant Fidelity is obligated to defend and indemnify plaintiffs in the underlying suit. Plaintiffs demanded coverage under the CSL on August 16, 2012. Subsequently, Fidelity denied the demand. Before the court is the motion for summary judgment of plaintiff, Oak Mortgage, and the cross-motion for summary judgment of defendant Fidelity.

DISCUSSION

Once the relevant pleadings have closed, any party may move for summary judgment, “whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.” Pa. R.C.P 1035.2(1). “Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and

that the moving party is entitled to judgment as a matter of law.” Rausch v. Mike-Meyer, 783 A.2d 815, 821 (Pa. Super. 2001).

“An action, proceeding or appeal must be commenced within the time specified in or pursuant to this chapter unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute or a shorter time which is not manifestly unreasonable is prescribed by written agreement.” 42 Pa.C.S. § 5501. “The law is clear that such a clause, setting time limits upon the commencement of suit to recovery on a policy, is valid and will be sustained.” General State Auth. V. Planet Ins. Co., 346 A.2d 265, 267 (Pa. 1975) (citations omitted). Further, “[t]his is not a statute of limitation imposed by law; it is a contractual undertaking between the parties and the limitation on the time for bringing suit is imposed by the parties to the contract.” Id. The intent of the parties to a written contract is ascertained from that writing, the contractual terms are ascribed their ordinary meaning, and where the language is unambiguous, intent is gleaned from the language. Kripp v. Kripp, 578 Pa. 82, 849 A.2d 1159 (2004).

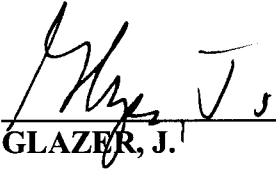
The clear contractual language in the CSL provides a one year limitation from the closing of the property. The discovery rule operates to toll the statute of limitation and does not operate to toll a contractual limitation. The closing of the property occurred on September 15, 2009. Plaintiff first notified Fidelity almost three years later in August 2012. Therefore, this court finds that plaintiffs’ claims are time-barred.

CONCLUSION

In light of the evidence, plaintiff’s motion for summary judgment is denied and the cross-motion for summary judgment of defendant, Fidelity National Title Insurance Company, is

granted. Moreover, judgment is entered in favor of defendant Fidelity National Title Insurance Company on all counts and plaintiffs' complaint is dismissed.

BY THE COURT:



GLAZER, J.¹