AmTrust Title Insurance Company

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BEWARE THE SUBORDINATION THAT JUST ENSURES A DEED OF TRUST IS A FIRST PRIORITY LIEN

Canyon Vineyard Estates I, LLC v. Commonwealth Land Title Ins. Co., 2026 Cal. App. Unpub. LEXIS 808 (Cal. Ct. App. Feb. 2, 2026)

Canyon Vineyard Estates I, LLC ("Canyon Vineyard") alleged Commonwealth Land Title Insurance Company ("Commonwealth") breached the implied covenant of good faith and fair dealing by (1) failing to investigate Canyon Vineyard's title insurance policy claim, (2) delaying and denying payment on the claim, (3) misrepresenting the policy terms, (4) hiring conflicted counsel instead of appointing independent counsel, and (5) directing conflicted counsel to take positions that gave Commonwealth a basis to deny the claim. Commonwealth contended that this cause of action arose from the prior lawsuit it filed on the insured's behalf. This court affirmed in part and reversed in part.

Mountains Restoration secured a $1,060,000 loan and executed a first lien deed of trust on the land, and in January 2002 a title company recorded the deed, the deed of trust, and a subordination agreement. The subordination agreement established that the bank would be able to foreclose on the land and that the deed of trust was a first priority lien that was superior to the grantor's right to the return (reversion) of the land.

The Fund (which had purchased the loan) concluded, based on the subordination, that the foreclosure had eliminated the deed restrictions created by the deed and that the land would "be held in perpetuity as natural open space." The Fund believed the land could be developed with up to 12 homes and could be worth more than $13 million.

The title policy had no exception for any restrictions and, further, stated that Commonwealth "shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured," as long as it did so diligently. Commonwealth also retained the right "in its sole discretion, to appeal from any adverse judgment or order." Commonwealth would not be liable "until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefore, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured."

Canyon Vineyard then applied to rezone the Property from "Open Space" to "Rural Residential." However, the Los Angeles County Department of Regional Planning denied the application and concluded that the requirement in the deed that the property "be held in perpetuity as natural open space" imposed a perpetual conservation easement on the property and thereby barred any residential development.

Commonwealth retained the law firm Garrett & Tully ("Garrett") as counsel to file a quiet title action. The action sought to obtain a judicial declaration that the 2008 foreclosure had extinguished the deed restrictions. The complaint asserted the subordination agreement subordinated any restrictions in the deed

Accordingly, the complaint alleged that the use restrictions in the grant deed were extinguished when the deed of trust was foreclosed on. In January 2020 the trial court granted summary judgment for the defendants and concluded that the deed created a "perpetual conservation easement . . . which was

not extinguished by foreclosure." The court concluded the subordination agreement did not subordinate the conservation easement to the lien of the bank's deed of trust. Commonwealth appealed, and in April 2022 another division of the same District affirmed the trial court's ruling. The California Supreme Court denied review.

In February 2023 Commonwealth denied Canyon Vineyard's claim and asserted that Canyon Vineyard had suffered no indemnifiable loss under the policy because the purchase price had already reflected the land's status based on the county's zoning decision.

According to Commonwealth, "an owner suffers no economic loss when the fair market value of the purchase price already reflected the encumbrance in the price willingly paid by it." Commonwealth rejected Canyon Vineyard's claim that the conservation easement rendered the Property far less valuable than the $80 million value of the land if unencumbered.

Commonwealth also argued Canyon Vineyard "assumed" or "agreed to" take title subject to the conservation easement. It argued the restriction was not a "deed restriction," but was a statutory conservation easement. Commonwealth concluded that the title insurance policy did not cover any loss stemming from the easement or zoning limitations, because the policy excluded losses caused by "any law, ordinance or governmental regulations" or the exercise of "governmental police power."

The title insurance policy expressly permitted Commonwealth "to institute and prosecute any action" to establish title or to reduce loss, and "in its sole discretion, to appeal from any adverse judgment or order." It specified Commonwealth would have no liability until entry of a final judgment. Commonwealth contended, and the court agreed, that the bad faith claim relied on Commonwealth's unreasonable decision to litigate and appeal.

Yet Commonwealth allegedly "unreasonably and in bad faith demanded that the Superior Court Judgment be appealed," and Canyon Vineyard believed "the primary purpose of the appeal was to delay the inevitable payment." That allegation squarely challenged Commonwealth's use of petitioning activity—its right to appeal—as unreasonable."

The order denying Commonwealth's special motion to strike was reversed. The matter was remanded to the trial court to enter an order that denied Commonwealth's motion to strike the allegations regarding the failure to investigate, misrepresentation of policy provisions, and hiring of conflicted counsel instead of independent counsel; and to consider whether Canyon Vineyard had shown a probability of prevailing on the merits as to the allegations regarding the delay in payment and the bad faith direction of conflicted counsel.

IT MUST BE THE SOLE CAUSE

Cardinal Fin. Co., L.P. v. Invs. Title Ins. Co., 2026 U.S. Dist. LEXIS 25754 (W.D. N.C.Feb. 9, 2026).

Investors Title Insurance Company ("Investors Title") issued an ALTA Closing Protection Letter ("CPL")and a Commitment for Title Insurance to Cardinal Finance Company ("Cardinal"), which identified Shope Krohn as the approved attorney to handle the closing and agreed to "indemnify [Cardinal] for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent, Approved Settlement Provider, or Approved Attorney." Pursuant to the CPL, Cardinal provided instructions to Shope Krohn, including a provision that "the

Agent must ensure the Loan Documents conform to Applicable Law with respect to: … (4) Verification of the identity of the Borrower(s)… ." On October 28, 2024, a Deed of Trust securing the $510,000 loan was purportedly executed by Charles and Mary Strauss before notary Wanda H. Wingfield.

The real Charles Strauss contacted the North Carolina Department of Justice to complain about fraudulent activity related to the $510,000 Loan. Charles J. Strauss and Mary K. Strauss attested that neither authorized a loan or a lien, they did not receive any of the funds, they did not communicate with plaintiff, and they did not sign a Deed of Trust. Apparently, the perpetrators of the fraud purchased a notary stamp with Wingfield's name and had been impersonating Wingfield since at least June 2023.

Cardinal filed this lawsuit on August 13, 2025, against Investors Title and Shope Krohn.

Investors Title asserted that there was an express Exclusion under the CPL for the type of fraudulent activity. The language cited provided that "the Company is not liable under this letter for any loss arising from any: fraud, theft, dishonesty, misappropriation by anyone other than the Company, Issuing Agent, Approved Settlement Provider or Approved Attorney (see Requirements #4, Conditions and Exclusions 3.n) or wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email or document production system, business email compromise, identity theft or diversion of Funds to a person or account not entitled to receive the Funds…" The Court agreed with Investors.

Cardinal's only response to the application of the exclusion for loss caused by the fraud of a third-party is that it had alleged that Shope Krohn's conduct was the "sole cause" of the loss and thus was outside the exclusion. The question is whether that factual allegation is plausible but while the closing attorney's negligent conduct may have permitted the fraud to be successful, in the absence of the forgery of the loan request and documentation, there would have been no loss or loan at all. Thus, Shope Krohn's conduct was not the "sole" cause of the loss.

Consequently, the exception for third-party fraud applied. Investors Title was entitled to the dismissal of Cardinal's claim that it breached the CPL.

THE TITLE INSURER IS YOUR FRIEND, LET IT KNOW YOUR PROBLEMS

Gibsland Bank & Tr. Co. v. Sec. Title Guar. Corp. of Balt. Court of Appeal of Louisiana, 2026 La. App. LEXIS 98 (La. App. Jan 21, 2026).

The Gibsland Bank & Trust ("GBT") mortgage was recorded January 19, 2011, six days after the closing. However, on January 11 - after the date Settle, the examiner for the title agent, completed his title exam on January 5 but before GBT's mortgage was recorded – Thomas, the mortgagor on both mortgages, executed another mortgage on the land to BIC, for $100,000. BIC recorded this the same day, January 11. Thomas had let the property taxes lapse for the years 2012 through 2016; because GBT was not the first-position lender, it did not receive notice of this delinquency. In early 2017, Thomas defaulted on his GBT loans, but the BIC mortgage was in first position. The letter by GBT to the title insurer demanded that Security Title Guaranty Corporation ("Security"), the title insurer, "resolve the claim" under the policy. This was the first notice sent directly to Security Title at the address provided in the policy for notices. On April 4, Security sent GBT a follow-up letter advising its investigation disclosed GBT had knowledge of the BIC mortgage at least by April 2012. Security asked why notice of the prior mortgage was not given then, as required by the policy. Settle was a practicing

attorney who also owned the title company at the time. He sold the title company in 2019 and permanently resigned from the practice of law in lieu of discipline in early 2020.

“GBT advised Settle about it at that time, and Settle was Security's agent. Without further elaboration, the court found Security's failure to pay the claim in a reasonably diligent manner was ‘in fact arbitrary and without probable cause which * * * caused some damage’ to GBT. The court found the damages included the itemized property tax penalty and interest of $33,256.71 and attorney fees from the bankruptcy case and sheriff sale of $13,113.12. The court also imposed a statutory penalty of $5,632.76.”

The policy, Condition 3, quoted above, required notice in writing, and Condition 17 stated, "Any notice of claim * * * must be given to the Company at Six South Calvert Street, Baltimore, Maryland 21202. Attn. Claims Department." Notice in compliance with these conditions was not sent until the demand letter.

The district court did not commit error in determining that Security breached its obligation to pay the covered risk for lack of priority of the mortgage. GBT's failure to send additional proof, such as information about further advances to the borrower, did not alter the coverage. The finding of a breach was affirmed.

GBT failed to make reasonable efforts to mitigate its losses when it received knowledge that its mortgage was not a first lien. A reasonable insured should have known notice to Settle and Ark-La-Tex Title when it discovered the title problem was not sufficient in lieu of notice to Security as required by the language of the policy. Had GBT promptly and properly advised Security of the problem, even in 2012, all the costs arising from the tax sale and Thomas's bankruptcies would have been avoided. GBT waited over four years to provide formal notice to Security. This court recognizes that GBT is a bank and trust company, it is a highly regulated and sophisticated financial business, and it has an in-house attorney. GBT is not the "average consumer." GBT did not mitigate its losses and this element of damages, $33,256.71, is reversed.”

The Security policy "Exclusions from Coverage" 3(d) provided the Company "will not pay loss or damages, costs, attorneys' fees, or expenses" that arise by reason of "[d]efects, liens, encumbrances, adverse claims, or other matters * * * attaching or created subsequent to the Date of Policy[.]" Thomas's bankruptcies were filed in August 2017 and March 2018, and the sheriff's sale was in March 2022. All of these events occurred after the date of the policy, January 13, 2011. The attorney fees also incurred in connection with these events were excluded from coverage by Exclusion 3(d). This element of damages, $13,113.12, will also be reversed.”

IT IS NOT NEGLIGENCE, IS IT?

Holman v. First Am. Title Ins. Co., 2025 U.S. Dist. LEXIS 254008 (D.D.C. Dec. 3, 2025)

The Court held that plaintiffs did not state a viable claim that First American Title Insurance Company (“First American”) owed the plaintiffs any duty of care outside of its contractual obligations.

Plaintiffs then requested that First American pay the $45,000 settlement on their behalf under the terms of their insurance policy. First American refused and cited the liability clause, which states that if First

American cured a defect "in a reasonably diligent manner" it is not "liable for any loss or damage caused thereby."

Plaintiffs alleged that First American was negligent in failing to discover and cure the title defect in a reasonable and timely manner.

Plaintiffs' negligence claim failed because their complaint did not allege that First American owed any duty of care outside of its contractual obligations under the policy.

First American's policy provided plaintiffs with coverage for "[a]ny defect in or lien or encumbrance on the title." The limitation of liability clause provided that if First American resolved a defect "in a reasonably diligent manner by any method" it would not be liable for any loss or damage caused by the defect. In the District of Columbia "[t]he failure to perform a contractual obligation typically does not give rise to a cause of action in tort."

In their negligence count, plaintiffs alleged that First American owed them a duty to "conduct a professional title search of their property, [and] to discover any defects in it, if any, that would render their title unmarketable." They also claimed First American owed them a duty to cure those defects in "a reasonabl[e], diligent, and timely[] manner." Id. Their breach of contract claim was nearly the same: Plaintiffs alleged that First American "fail[ed] to discover[] the defect in the Plaintiffs' title" and "failed to cure Plaintiffs' title defect[] in a timely manner." Both the contract and negligence claims were based on the same alleged duties of First American to discover and resolve title defects. "The plain text of th[ese] allegation[s]—that there is a duty pursuant to the insurer-insured relationship—is a dead giveaway that the claim arises from the insurance contract." Plaintiffs' tort claims amount to an allegation that First American negligently breached the terms of the contract. But "the mere negligent breach of a contract . . . is not enough to sustain an action sounding in tort."

Plaintiffs did not point to any independent act of negligence by First American. Thus, the Court dismissed plaintiffs' negligence claim.

DARN THAT SURVEY EXCEPTION
Lindeman v. Chi. Title Ins., 2026 U.S. Dist. LEXIS 28353 (S.D. S.D. Feb. 9, 2026).

Lindeman bought the insured property and then secured a survey to determine the boundary. The survey showed that a fence belonging to the Haackes crossed the insured land along the northern and eastern borders. Lindeman informed the Haackes that he would remove the disputed fence on his property and install a boundary fence.

The Haackes objected and filed suit. They asserted that parts of the disputed land were located on their property. Thereafter Lindeman contacted his title insurer, Chicago Title, to notify of the Haackes' suit and request that Chicago defend.

Chicago Title asserted it had no duty to defend Lindeman in the lawsuit by the Haackes. The nuisance and trespass claims were clearly outside coverage. The Haackes were additionally seeking to quiet title to their own property, not claiming title to a portion of the insured's land. Chicago also noted that the policy excepted coverage for loss or damage from encroachments, encumbrances, violations, or adverse circumstances that would have been disclosed by an accurate or complete survey. Lindman

did not secure a survey before buying the land. Another exception also excluded coverage for loss arising from easements or claim of easements.

The Court concluded that Chicago Title had not shown that Haackes' claims for relief clearly fell outside policy coverage. It is at least arguable that they were requesting that the state court declare them to be the owners of a portion of the land despite the fact that Lindeman's survey indicated the disputed fence was located on Lindeman's land. The information in support of the request for Chicago Title to defend raised doubts about whether the claims in effect challenged Lindeman's fee ownership title to a portion of the land and, therefore, doubts about whether the claims fell outside policy coverage. In any case, even if Chicago Title believed the Haackes had no basis to claim ownership of a portion of the land, Chicago Title had a duty to defend, even if the language and extraneous facts suggested the claim was false, groundless, or fraudulent.

Exclusion 3(a) excluded matters "created, suffered, assumed, or agreed to by the Insured Claimant." Even if Lindeman was on notice prior to the purchase that the fence did not show the boundary line, that does not mean equal notice that the Haackes were claiming a portion of the land. Chicago Title still asserted that it had no duty to defend Lindeman because Schedule B negated coverage for claims, including claims of easements, of parties not in possession that would not have been shown by the public records and claims of encroachments that would have been disclosed by an accurate or complete survey. Chicago Title had not shown the Haackes' claim of title ownership to a portion of the land was clearly excluded. Even if an accurate and complete survey would have shown the location of the disputed fence as boundary line, Chicago Title did not establish that an accurate and complete survey would have shown whether the Haackes would dispute title ownership.

Condition 5 expressly limited Chicago Title's duty to defend to covered claims only and provided that the Company "will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of actions that allege matters not insured against by this policy." “The majority of the courts addressing the question have concluded that the complete defense rule does not apply to title insurance. See, e.g. , GMAC Mortg., LLC v. First Am.Title Ins. Co., 985 N.E.2d 823 (Mass. 2013) (explaining that "the central policy behind [the complete defense rule]-that parsing multiple claims is not feasible-is not implicated to the same extent in the title insurance context as in the general liability insurance context"); Lupu v. Loan City, LLC, 903 F.3d 382 (3d Cir. 2018) (same); Phila.Indem. Ins. Co. v. Chi. Title Ins. Co., 771 F.3d 391 (7th Cir. 2014) (same);Cherry Hills Farm Court, LLC v. First Am. Title Ins. Co., 428 F.Supp.3d 516 (D. Colo. 2019) (reasoning that "the scope and purpose of title insurance is so different from general liability insurance that the complete defense rule is not necessary"). 2026 U.S. DTist. LEXIS 28353.” The court could not predict how the South Dakota Supreme Court would hold.

On the record, a jury could reasonably concluded that Chicago Title acted unreasonably in investigating, evaluating, and processing Lindeman's claim. Chicago Title had not shown entitlement to judgment as a matter of law, and Chicago Title's motion for summary judgment was denied.

WHOSE HOUSE AM I LIVING IN?

Messersmith v. CATIC Title Ins. Co., 2025 U.S. Dist. LEXIS 254094 (M.D. Pa. Dec. 9, 2025).

The plaintiff bought a property with a street address of 332 Old York Road, New Cumberland, PA 17070 for $70,000.00 and purchased a title insurance policy from CATIC Title Insurance Company (“CATIC”), which insured the title to the land. Plaintiff thought that she purchased the land described as "York County Parcel ID No. 27-000-RF-0029.A0-00000" and a residence that she thought was located on the described parcel of land. However, Plaintiff did not survey the land before buying the title insurance policy or closing the purchase.

In late May or early June of 2024, plaintiff was notified by her neighbor, Mr. Seaks, that the house she was living on was actually located on his land. Plaintiff obtained a survey of the land, which showed that the home was entirely located on the Seaks Property.

Covered Risk 31 (of the Homeowner’s Title Insurance Policy) stated: "The residence with the property address shown in Schedule A is not located on the land at the date of the policy." (Id. at 19.) Schedule A identified the property address as 332 Old York Road, New Cumberland, PA 17070, and defined "Land" by the legal description. However, Schedule B included exceptions to coverage, including Exception 1: "Any variation in location of lines or dimensions or other matters which an accurate survey would disclose." The Court concluded that the complaint failed to plausibly allege that defendant breached a contractual duty owed to plaintiff.

Plaintiff argued only that the exception should not render the Covered Risk 31 useless. However, the Court rejected this argument. Exception 1 excludes "[a]ny variation in location of lines or dimensions or other matters which any accurate survey would disclose." If plaintiff had obtained a survey, and that survey had failed to reveal the location of the house on the adjoining Seaks Property, then Covered Risk 31 could have covered the issue. However, Exception 1 provided that by closing on the land without a survey and by signing a title insurance policy that contained this exception, plaintiff assumed the risk of "[a]ny variation in location of lines or dimensions or other matters which any accurate survey would disclose." Based on the allegations of plaintiff's complaint, an accurate survey would have shown the variation had it been done before closing. Plaintiff's claim falls within the stated exception and is not a covered risk under the title insurance policy. Consequently, the Court granted defendant's motion to dismiss the breach of contract claim.

CLOSING NO NO

Pac. Am. Title Ins. & Escrow Co. v. Evanston Ins. Co., 2026 U.S. App. LEXIS 5284 (9th Cir. Feb. 23, 2026).

Guam looks to California law, in addition to its own, in interpreting insurance policies because Guam's insurance statutes were adopted from California's. But Evanston Insurance Company (“Evanston”) did not owe Pacific American Title Insurance & Escrow Company (“PATICO”) a duty to defend because Policy Exclusion B.7 stated that the policy would not cover "any Claim" "[b]ased upon or arising out of: [a]ny conversion, misappropriation, commingling, defalcation, theft, disappearance, or insufficiency in the amount of escrow funds, monies, monetary proceeds, funds or property, or any other assets, securities, negotiable instruments or any other thing of value." This exclusion applied "irrespective of which individual, party, or organization actually or allegedly committed or caused in whole or in part the conversion, misappropriation, commingling, defalcation, theft, disappearance, or insufficiency in amount.”

Evanston had shown that "the exclusion applies in all possible worlds" presented by the Complaint. All five of the claims are predicated on allegations that PATICO assisted a co-defendant to obtain two million dollars from an allegedly illegal property transaction. This conduct was conversion and the exclusion applied "irrespective" of who actually committed or caused the theft or conversion, which Evanston had no duty to defend under the text of the exclusion.

NO OBLIGATION TO DEFEND PARTY WHO IS NOT AN INSURED

Renton Props., LLC v. 213 Upland, 2025 La. App. LEXIS 2511 (La.App. Dec. 18, 2025).

JodyCorp bought a tract of land from Upland, which Upland allegedly agreed to sell to Renton. Renton then sued JodyCorp and its principal, Charles Cannon, for specific performance. Commonwealth defended JodyCorp but refused to defend Cannon. Commonwealth settled with Renton. JodyCorp then sought consequential delay damages against Commonwealth

Condition 7(b)(i) of the policy covers costs, attorneys' fees, and expenses, but does not cover damages.

Cannon was not an insured under the policy, because he never had an interest in the insured land and was not listed as an insured. Renton's alter ego allegations against Cannon asserted that, as the principal member of JodyCorp, the corporate entity should be disregarded and Cannon should be held liable for JodyCorp's debts. The appellate court affirmed the trial court's grant of Commonwealth's motion for summary judgment against Cannon and dismissal of Cannon's claim.

Pursuant to the conditions, Commonwealth had three options to resolve a claim in addition to defense of the Insured's title: (a) pay policy limits to the Insured; (b) "pay or otherwise settle" with the adverse title litigant in the name of the insured; or (c) pay or otherwise settle with the insured for "the loss or damage provided for under this policy." If the insurer exercised any of the three options, it must also pay "any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay." Commonwealth argued the policy limits its obligation to pay "any costs, attorneys' fees, and expenses, incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay."

Commonwealth asserted that this language pertains to its defense obligation and not its indemnity obligation to the Insured. This refers to the formula for determining the extent of the insurer's liability for a title defect that cannot be cured under Condition 8 of the policy. "Courts lack the authority to alter the terms of insurance contracts under the guise of contractual interpretation when the policy's provisions are couched in unambiguous terms. Sims v. Mulhearn Funeral Home, Inc., 07-54 (La. 5/22/07), 956 So.2d 583, 589; Cadwallader v. Allstate Insurance Co., 02-1637 (La. 6/27/03), [Pg 10] 848 So.2d 577, 580. The rules of contractual interpretation do not authorize the exercise of inventive powers to create an ambiguity where none exists or the making of a new contract when the terms express with sufficient clarity the parties' intent. Sims, 956 So.2d 583, 589; Edwards v. Daugherty, 03-2103 (La. 10/1/04), 883 So.2d 932, 941; Peterson, 729 So.2d at 1029. Because the policy only used the terms costs, attorneys' fees, and expenses, the court cannot incorporate another item into the policy language and make the insurer liable for sums related to something not included within the parties' intent under the policy. 'Costs, attorneys' fees, and expenses' are not synonymous with 'damages,' which is the term the trial court incorporated into this language to find coverage for damages caused the alleged defective title. Upon review of this condition and the entire policy, we find the terms costs, attorneys' fees, and

expenses as written in this condition pertain more to defending JodyCorp against the title claim and not damages such as lost profits. This is further supported by the phrase written after these terms, specifically 'that were authorized by the Company up to the time of payment.' It is illogical and unlikely the insurer would authorize 'damages' caused by the defective title. We therefore vacate the trial court's ruling to the extent it states the policy provides coverage for damages resulting from allegations of defective title under condition 7. In this regard, we also reverse the granting of JodyCorp's motion for partial summary judgment on the issue of coverage for damages caused by allegations of defective title."

SALE AND CLEAR OF LIS PENDENS

In re Fulcrum Loan Holdings, LLC, 2025 Bankr. LEXIS 2819 (Bankr. N.D. Ga. Oct. 31, 2025).

Fulcrum filed its chapter 11 case on June 11, 2024, and on May 21, 2025, Bay Point filed a chapter 11 plan for the liquidation of Fulcrum. The Court entered an order confirming the Fourth Amended Chapter 11 Plan of Liquidation. The Plan provided for the sale of the Fulcrum Property free and clear of all interests in the property, including a lis pendens, with cancellation of the lis pendens and attachment of the interests to the proceeds of the sale.

The plaintiffs objected to the confirmation. The Plan amendments addressed many of the objections but did not resolve their objections, including that the Plan impermissibly provided for the sale of the Fulcrum Property free and clear of their interests and their claim that Fulcrum had no interest in it because Fulcrum acquired it through a fraudulent transfer.

The Court had evidentiary hearings and entered the Confirmation Order that overruled the plaintiffs' objections. The plaintiffs filed a motion and an amended motion for the Court to reconsider the confirmation of the Plan or, alternatively, for a stay pending appeal.

The results of confirmation of the Plan were that (1) the Fulcrum Property would be sold, free and clear of all encumbrances; (2) all of the rights, claims, and interests of the plaintiffs in the Fulcrum Property would attach to the net proceeds after payment of taxes and expense; and (3) after final judicial determination of the rights, claims, and interests of the parties, the proceeds would be disbursed in accordance with the determinations.

The Fulcrum Plan did not alter a single right, claim, or interest of the plaintiffs in the Fulcrum Property. It transferred all rights, claims, and interests to the proceeds of the sale. In other words, it replaced the Fulcrum Property with cash in an escrow account. When the courts determine the rights, claims, and interests of the parties in the Fulcrum Property, the cash will be distributed as provided in those rulings.

SALE FREE AND CLEAR OF SOMETHING

In re Worcester Country Club Acres, LLC, 655 B.R. 41 (Bankr..D. Mass. 2023).

The statutory grant of authority to sell property under Section 363 requires that the estate actually have an interest in the land to be sold. A bankruptcy court may not allow the sale of property without first determining whether the debtor in fact owned the land. 11 U.S.C.S. § 363(f)(4) does not contemplate or

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require that the court resolve or determine any dispute about ownership before a sale hearing, but rather requires only an examination of whether there is an objective basis for either a factual or legal dispute about ownership.

"By its very structure, the Bankruptcy Code requires a determination of whether property is property of the estate (and thus may be sold) prior to any analysis as to whether a particular interest in property is in bona fide dispute under subsection (f)(4). Subsection (f)(4) permits the sale of property free and clear of an interest in bona fide dispute only to the extent that the property may be sold under subsections (b) or (c). 11 U.S.C. § 363(f) ('The trustee may sell property *under subsection (b) or (c)* of this section free and clear of any interest in such property of an entity other than the estate, only if . . . .') (emphasis supplied). And subsections (b) and (c), in turn, authorize the sale of property by the trustee or debtor in possession *only* if the property is 'property of the estate.' 11 U.S.C. §§ 363(b)(1), (c)(1). Accordingly, '[i]mplicit within the statutory grant of authority to sell property under section 363 . . . is the requirement that the estate actually have an interest in the property to be sold." *Atlantic Gulf*, 326 B.R. at 298-99. Simply put, '[a] bankruptcy court may not allow the sale of property as 'property of the estate' without first determining whether the debtor in fact owned the property.' *Warnick v. Yassian (In re Rodeo Canon Dev. Corp.)*, 362 F.3d 603, 608 (9th Cir. 2004).