

July 2012

TitleNews

Official Publication of the
American Land Title Association

Top Lawsuits Impacting the Title Industry

Court Decisions from Around the
Country Every Title Professional
Should Know

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Hart, et al. vs. Tigor Title Insurance Co. 126 Haw. 448, 272 P.3d 1215 (2012)

Facts: The Harts owned two adjoining parcels in Honolulu, Hawaii. They had obtained fee insurance from Tigor Title Insurance Co. at the time of purchase. Later, they applied to the land court to register and consolidate both parcels into one. In response to the application, Hawaii filed an answer that contained a pro forma defense that “the State reserves any interest in the property that may have escheated to the state.” No other facts concerning an escheat were ever cited in the proceeding. In fact, the state later filed a memorandum with the land court stating that “the State is not pursuing any claim of escheat to the State.” The registration proceeding was then concluded in due course.

In the coverage litigation, both the trial court and the intermediate appellate court found that Tigor had no duty to defend because the defense was “routine” and “did not create a realistic or reasonable

potential for coverage.” In addition, there was evidence that the Harts’ counsel expended no time in defending the escheat allegation.

Title Counsel

The purpose and scope of work of ALTA’s Title Counsel is to promote the exchange of information within the ALTA membership about current developments in the law affecting title insurance and conveyancing.

If you are interested in joining Title Counsel or submitting a case summary relevant to the title insurance industry, please contact Steve Gottheim, ALTA’s regulatory and legislative counsel, at sgottheim@alta.org.

Holding: The Supreme Court of Hawaii determined that “because a mere potential for coverage existed under the policy,” Tigor was obligated to defend against the escheat “claim.” Accordingly, the court remanded the case to the trial court to determine the amount of attorney’s fees and costs to be awarded to the Harts.

Relevance to the Title Industry: This appears to be the first reported case on these facts anywhere in the nation. While it arose in the context of a land registration proceeding, there are many instances of land litigation to which state or municipal agencies are necessary parties. Pro forma answers or allegations are commonplace in these proceedings. The rationale of this decision, if it takes hold in other states, could open the floodgates to title coverage litigation over completely baseless allegations.

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