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## The Docket: Policy Coverage Denied Due to Inequitable Behavior of Insured

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*The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.*

Lance Pomerantz, a New York sole practitioner who provides litigation consultation, strategy and expert testimony in land title disputes, provided today's review of a recent North Carolina case that interprets Policy Exclusion 3(a). He can be reached at [lance@landtitlelaw.com](mailto:lance@landtitlelaw.com).

**Citation:** *LJW Land, LLC v. Old Republic National Title Insurance Company*, No. 3:15-CV-00190-FDW (W. D. N. C., August 12, 2016).

**Facts:** LJW Land LLC (the insured) held a first mortgage on the property. The seller (Ardley) held a subordinated second mortgage on the property. The principals of the insured were the same as the principals of the landowner and developer entity (Reverdy).

After the subdivision development failed as a result of Reverdy's conduct, the insured ("with Reverdy's cooperation") commenced foreclosure proceedings seeking, *inter alia*, to cut off the Ardley junior mortgage. Ardley commenced a counter-suit alleging that Reverdy and the insured were "mere instrumentalities and alter egos" of the principals and the insured's mortgage was unenforceable because it had merged with the fee as a result.

The insured sought defense coverage under its lender's policy, which was denied. Settlement of the Ardley action included a substantial payment by the insured, for which the insured sought indemnification under the policy. The indemnity claim was also denied. The insured then commenced this action against Old Republic.

**Holding:** Because the Ardley action alleged the principals of the insured "used their control and domination of [the insured and the owner/developer] to commit fraud or wrong, to violate certain legal duties, and/or to commit dishonest or unjust acts in contravention of Ardley's rights," the claim was held to be excluded from coverage under policy Exclusion 3(a). The allegations established the Insured either "created" (through its "intentional torts such as conspiracy, unfair and deceptive trade practices, disregard for corporate formalities ...") or "suffered" (by "failing to follow corporate formalities, allowing domination and control" by the principals) the adverse claim of lost priority.

**Relevance to the Title Industry:** The interpretation of Policy Exclusion 3(a) has been the subject of a rapidly expanding body of recent case law. Many fact patterns center on notice issues, authority to act or physical characteristics of the real estate. *LJW Land* demonstrates that inequitable conduct by the insured toward a third party may provide a basis for denying coverage.

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