

## **Summary of SC94580, *Randy Spalding v. Stewart Title Guaranty Company***

Appeal from the Jackson County circuit court, Judge Michael W. Manners

Argued and submitted April 8, 2015; opinion issued May 12, 2015

**Attorneys:** Stewart Title was represented by John A. Koepke of Jackson Walker LLP in Dallas, Texas, (214) 953-6005; and John T. Coghlan, Justin Nichols and R. Kent Sellers of Lathrop & Gage LLP in Kansas City, (816) 292-2000. Spalding was represented by Matthew V. Bartle and David L. Marcus of Bartle & Marcus LLC in Kansas City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man sued a title insurance company after discovering the company had issued title insurance to two owners for the same tract of land within property the man intended to develop. The title company appeals the judgment in the man's favor. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. The man's breach of contract action did not accrue until the title company offered him less than adequate compensation for his "actual monetary loss or damage" caused by the title defect. As such, he filed his action on time, and the court did not err in instructing the jury otherwise. The man presented sufficient evidence on the record as a whole to support the jury's determination of damages for breach of contract, and the circuit court did not abuse its discretion in allowing any of the expert testimony from the man's appraiser. The court did not err in instructing the jury how to measure damages. The instruction gave the jury the proper measure of damages, was an accurate statement of the law, and did not mislead or confuse the jury. The instruction allowed the jury – but did not require it – to consider and weigh evidence concerning the highest and best use of the property.

**Facts:** Randy Spalding contracted to buy 419 acres of property in the city of Lake Winnebago; much of the property is in a federally designated flood area. He and his wife formed Spalding Land Company, which acquired the land for \$1.51 million and took title to the property in February 2003. The same month, Stewart Title Guaranty Company issued a \$1.7 million title insurance policy for the property. The policy stated it was an indemnity contract against "actual monetary loss or damage sustained or incurred by the insured claimant" with liability not to exceed the lesser of the amount of insurance or the difference between the value of the insured estate or interest as insured and the value subject to defect, lien or encumbrance. Over the next few years, Spalding and others pursued plans to develop the property with lake-front lots and traditional lots with lake-front access. Then, in January 2006, Paul Estes notified Spalding that Estes owned one acre within the proposed development. As it turned out, both held deeds showing they owned the one-acre tract, both had purchased title insurance from Stewart Title, and both contacted Stewart Title about a possible title defect. Stewart Title conducted an investigation from April 2006 until mid-June 2006, when it determined Estes owned the one-acre tract. In July 2006, Spalding made a claim under the title insurance policy. Stewart Title elected to pay Spalding's loss, and – based on an appraisal it commissioned – sent Spalding a check for \$10,000 to resolve the claim. Spalding rejected the payment, informed Stewart Title that \$10,000 did not compensate the loss fully, and suggested that – in lieu of paying the loss suffered as a

result of the title defect – Stewart Title purchase the one-acre tract from Estes for \$387,000. To facilitate this approach, Spalding purchased and repeatedly renewed an option to purchase the tract from Estes. Stewart Title, however, continued to insist Spalding’s loss was only \$10,000. The development stalled, and Spalding sued Stewart Title in June 2011, asserting claims for breach of contract and vexatious refusal to pay in regard to a title insurance policy. After a jury trial, the circuit court entered an amended judgment for Spalding in the amount of \$1.1 million plus \$110,150 in penalties and \$81,000 in attorney fees. Stewart Title appeals.

**AFFIRMED.**

**Court en banc holds:** (1) Spalding’s breach of contract claim was filed timely. Spalding had no such claim until Stewart Title allegedly failed or refused to compensate Spalding adequately for “the actual monetary loss or damage” as required under the title insurance policy. This breach did not occur until July 2007, when Stewart Title sent the \$10,000 check to resolve fully the claim under the title insurance policy – fewer than five years before Spalding filed suit. Under the language of the insurance policy and the facts of this case, the mere existence of a possible title defect did not give rise to any cause of action against Stewart Title. The policy did not guarantee good title or protect against any potential claim; rather, it provided indemnity against “actual monetary loss or damage.” Until Stewart Title determined there was an actual defect with Spalding’s title to the property, Spalding did not suffer an “actual monetary loss or damage” and could not seek indemnification from Stewart Title.

(2) The circuit court did not err in refusing to submit Stewart Title’s proposed jury instruction regarding the title company’s statute of limitations defense. Even assuming the applicable statute of limitations was five rather than 10 years – a question the Court does not reach – it did not begin to run until July 2007, and Spalding filed suit in June 2011, well within the five-year statute of limitations Stewart Title argues applies in this case.

(3) Because Spalding presented sufficient evidence on the record as a whole to support the jury’s determination of damages for breach of contract, the circuit court did not err in overruling Stewart Title’s motions for directed verdict or judgment notwithstanding the verdict. Spalding presented evidence of damages through the testimony of a licensed appraiser, who estimated the damages, as of February 2007, at \$4.1 million. His valuation stemmed from the proposed lake development that was in progress when the title defect was determined. To the extent the title company contends this damages estimate was based in part on the inclusion of parcels of land included in the development plan but not owned or insured by Spalding, on a plan Spalding had stopped developing, or on other assumptions, Stewart Title cross-examined the appraiser extensively and pointed out shortcomings in his testimony. It was up to the jury to weigh the appraiser’s testimony in considering his opinion valuing the property. Based on the record in its entirety, the court did not abuse its discretion in allowing any of the appraiser’s expert testimony.

(4) The circuit court did not err in giving a particular jury instruction and in overruling Stewart Title’s motions for judgment notwithstanding the verdict and new trial. There is no specific Missouri approved instruction directly applicable in this case. As such, a Missouri approved instruction (MAI) must be modified to submit the issue fairly. The instruction given to the jury was modified from MAI 9.02, typically used for eminent domain and other condemnation cases.

This Court previously has held MAI 9.02 is appropriate to use for instructing the jury to measure damages for a claim made against a title insurance policy. The instruction told the jury to measure damages based on the highest and best use of the property. The “as insured” language in the Stewart Title insurance policy, however, refers to the condition of the title, not the use of the property. The policy is silent about how the valuation is to be performed, and appraisers for both parties testified their appraisals were based on the property’s “highest and best use.” No witness testified that Spalding’s damages must be calculated based on the value of the property as it was being used at the time of the breach. To the extent that Stewart Title contends the property “as insured” under the policy necessarily meant undeveloped property, instead of fully developed lakefront property, its contention is without merit. The instruction gave the jury the proper measure of damages, was an accurate statement of the law, and did not mislead or confuse the jury. The instruction allowed the jury – but did not require it – to consider and weigh evidence concerning the highest and best use of the property.