

TITLE INSURANCE CASES

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CASES REVIEWED

- ♦ Lawyers Title Ins. Corp. v. Doubletree Partners, L.P., 739 F.3d 848 (5th Cir. 2014)
- ♦ McGonagle v. Stewart Title Guar. Co., 432 S.W.3d 535 (Tex.App.--Dallas 2014, pet. Denied)
- ♦ Dailey v. Thorpe, 445 S.W.3d 785 (Tex.App.--Houston [1st Dist.] 2014, no pet.)
- ♦ Fonenot v. Land America Commonwealth Title of Houston, Inc. 2014 WL 4260114 (Tex.App.--Houston [1st. Dist.] 2014 (Memorandum Opinion))

CASES REVIEWED (CONT.)

- ♦ IQ Holdings, Inc. v. Stewart Title Guar. Co., 451 S.W.3d 861 (Tex.App.--Houston [1st dist.] 2014)
- ♦ LJC Financial, LLC v. Alliant Nat'l Title Ins. Co. 2014 WL 7190872 (Memorandum & Opinion December 16, 2014) and 2015 WL _____ (Memorandum & Opinion April 24, 2015) (US Dist. SD Tex)
- ♦ First Amer. Title Ins. Co. V. Patriot Bank, 2015 WL 2228549 (Tex.App--Houston [1st Dist.] 2015, no pet.) (Memorandum Opinion)
- ♦ Love v. Chicago Title Ins. Co., 2016 WL 4045400 Tex.App.--Dallas 2016 (Memorandum Opinion)

LAWYERS TITLE INS. CORP. V.
DOUBLETREE PARTNERS, L.P.
739 F.3RD 848
(5TH CIR. 2014)

FACTS

- ❖ Owner purchased a 36 acre tract on Lake Lewisville for \$3.45M, with the intention to develop a luxury retirement community for seniors, including 18 multi-story buildings with multiple units, a community center and other amenities.
- ❖ Owner purchased an Owner Policy from the Title Insurer. The Title Insurer offered to amend the survey exception in the Owner Policy if a survey was obtained and the additional premium was paid for the "survey coverage".
- ❖ The property was encumbered by a number of easements and restrictions, including a flowage easement granted in 1955 which gave the U.S. the right to flood, overflow and submerge areas of the property below the 537 feet elevation level and prohibited construction of any structures below that elevation without the written consent of the U.S.
- ❖ Owner obtained a pre-closing survey showed the "approximate location" of the flowage easement as covering only a relatively small portion of the property. The surveyor relied upon flood insurance maps, as opposed to publicly available contour maps to determine the approximate boundary of the flowage easement.

MORE FACTS

- ❖ Schedule B of the final Title Commitment, listed several encumbrances as exceptions to coverage, including the flowage easement and also the amendment of the survey exception. The exceptions listed in the Title Commitment were referenced in the sales contract, in the vesting deed and in the leaseback agreement signed at closing.
- ❖ The Owner Policy of Title Insurance, as originally issued to Owner, did not include several Schedule B exceptions, including the flowage easement and the survey amendment negotiated by the parties, due to a software error.
- ❖ During the development planning process, Owner discovered a serious error in the survey, because the surveyor substantially underrepresented the area of the property that was subject to the flowage easement. Owner halted development of the property because the Owner would be unable to build several of the residential structures it intended to build on the lakeside portion of the property.
- ❖ Owner subsequently defaulted on its mortgage and the lender foreclosure foreclosed its liens against the property, which was sold at a public auction to the Trust for Public Land, a conservation organization.
- ❖ Owner filed a complaint against the surveyor with the Texas Board of Professional Land Surveying, which, although noting the surveyor did not follow the "best practices" and produced a survey that was "could be considered confusing", ultimately determined that Paine did not violate any professional standards while conducting the survey.

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