

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO.: 07-15721-01 CA 27

ARTHUR BLEICH and GLORIA ELDER,
individually and on behalf of all others
similarly situated.

Plaintiffs,

vs.

CHICAGO TITLE INSURANCE COMPANY,
a Foreign Corporation,

Defendant.

**ORDER GRANTING THE PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

Plaintiffs ARTHUR BLEICH and GLORIA ELDER Motion for Class Certification, having come before the Court and the Court being fully advised by Counsel in the premises, and the Court having reviewed all relevant materials, finds as follows:

THE CONTROVERSY

(1) This case involves title insurance on mortgages in which the mortgagor already owns the property, and has already paid for title insurance on the original purchase, but requires a new title insurance policy to cover the property's refinancing.

(2) The plaintiff alleges that the defendant was required to charge a lower rate, which is set by Florida law. In its motion to certify a class, the plaintiff alleges that defendant engaged in a systematic effort to overcharge not only the plaintiff, but also numerous similarly situated individuals.

(3) Section 627.782, Florida Statutes (2004) requires the Financial Services Commission to establish title insurance rates that title insurance companies are permitted to charge. Rule 690-186.003 of the Florida Administrative Code establishes that rate.

(4) Rule 690-186.003 includes a discounted rate referred to as the “reissue rate.” The “reissue rate,” which is the rate charged for title insurance on mortgages for property that the borrower already owns, but is refinancing, is set lower than the rate that is used for a borrower buying the property for the first time.

(5) The theory is that, title insurance having been previously procured for the original purchase (and the concomitant time and energy previously expended to do a complete title search), the insurance on the refinancing loan involves less risk and effort. Chesner v. Stewart Title Guaranty Company, 2008, WL 553773 (N.D. Ohio 2008); Mitchell v. Chicago Title Insurance Company, 2003 WL 23786983 (Minn. Dist. Ct. 2003).

(6) Rule 690-186.003(2) speaks specifically to the reissue rates:

(2) Reissue Rates.

(a)1. The reissue premium charge for owner’s, mortgage, and leasehold title insurance policies shall be [a chart is provided showing the required rates]...

(b) Provided a previous owner’s policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner’s policy, the reissue premium rates in paragraph (a) shall apply to:

STANDING

(7) In its memorandum of law in opposition to the motion to certify a class, the defendant focuses on the above language of subsection 2(b) which limits the applicability of the lower rate, and is repeated below for emphasis. According to the defendant, this language means that the defendant is not required to charge the discount rate unless it retains for its files a copy of the previous insurance policy. Therefore, according to the defendant’s reasoning, it may avoid the lower rate by refusing to maintain a copy of the previous policy.

Provided a previous owner’s policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner’s policy.

Id.

(8) Using the above language, the defendant responds to the motion for class certification based on standing. The issue of standing is a threshold inquiry which must

be made at the outset of the case before addressing whether the case is properly maintainable as a class action.” Ferreiro v. Philadelphia Indem. Ins. Co., 928 So. 2d 374 (Fla. 3d DCA 2006). “To satisfy the requirement of standing, the plaintiff must show that a case or controversy exists between the plaintiff and the defendant, and that such case or controversy continues from the commencement through the existence of litigation.” Id. at 377. Alternatively stated, the plaintiff must “allege some threatened or actual injury resulting from the putatively illegal action.” Linda R.S. v. Richard D., 410 U.S. 614, 617 (S. Ct. 1973).

(9) “In determining whether a case or controversy exists the trial court is not required to determine the merits of the case, but rather is to determine whether sufficient facts have been alleged to establish that there is an issue to be decided.” Olen Properties Corp. v. Moss, 981 So. 2d 515, 518 (Fla. 4th DCA 2008).

(10) This Court finds that, in the instant case, the plaintiff has alleged sufficient facts to establish that “there is an issue to be decided.” Id. The interpretation of the regulation in relation to the particular facts of this case is one of the many issues that create a controversy that is appropriately heard before this Court. The plaintiff therefore does have standing as it relates to certifying a class.

(11) Furthermore, even if the defendant’s preferred interpretation of the regulation were well settled law, the Court would still have a controversy to settle: whether “both the reissuing agent and the reissuing underwriter retain[ed] for their respective files copies of the prior owner’s policy.”

(12) The defendant also asserts that it has immunity from suit because of the filed rate doctrine. The filed rate doctrine requires an entity to charge the rates or tariffs that are properly promulgated by the appropriate regulation authority, and in return provides immunity from suit in regards to the propriety of charging that rate. Keogh v. Chicago & Northwestern Ry. Co., 260 U.S. 156 (S. Ct. 1922).

(13) However, it is yet to be determined whether the defendant was charging the proper rate. The plaintiff asserts that the defendant should have charged the lower discounted rate, while the defendant states that it was required to charge the higher rate.¹ This represents another “case or controversy” for which the plaintiff has standing.

CERTIFICATION

(16) Having determined that the plaintiff has standing to certify a class, the Court must now determine whether the plaintiff has met the requirements set forth in Florida Rule of Civil Procedure 1.220.

(17) These requirements are commonly referred to as numerosity, commonality, typicality and adequacy. See Rollins, Inc. v. Butland, 932 So. 2d 1172, 1178 (Fla. 2d DCA 2006); Terry L. Braun, P.A., 827 So. 2d at 266.

¹ Or in the alternative that the rate to be charged was discretionary.

(18) In addition to the requirements of Rule 1.220(a), the requirements of one of the subsections of Rule 1.220(b) must also be met in order for a class action to be maintained. Rollins, Inc. at 1178. In the instant case, the plaintiff has satisfied subsection 1.220(b)(3), which requires that “issues which are subject to generalized proof must predominate over issues that require individualized proof and the class action must be superior to other available methods for a fair and efficient adjudication of the controversy.” Ortiz v. Ford Motor Company, 909 So. 2d 479, 481 (Fla. 3d DCA 2005) (citing Neenan v. Carnival Corp., 199 F.R.D. 372 , 375 (S.D. Fla. 2001); Liggett Group Inc., 853 So. 2d at 445; and City of Pompano Beach v. Florida Dept. of Agriculture, 2002 WL 1558217 (Fla. 17th Cir. Ct. Jan. 24, 2002)).

(19) The defendant has not contested the certification based on any of the elements of Rule 1.220. Nevertheless, this Court has applied the elements of Rule 1.220 to the controversy before it, and finds that all the elements have been satisfied for a class certification.

WHEREFORE, the Court having reviewed all relevant materials, and carefully considered the issues presented by Counsel, it is hereby ordered that the Motion for Class Certification is GRANTED.

8 **DONE AND ORDERED** in Chambers at Miami, Dade County, Florida, this
day of Jan, 2009



JUDGE MARIA ESPINOSA DENNIS

CC: Copies furnished to all parties of record.