

DOC. NO.: HHD-CV-17-6076972-S : SUPERIOR COURT
RCN CAPITAL, LLC : J.D. OF HARTFORD
 : AT HARTFORD
V. :
 :
CHICAGO TITLE INSURANCE CO. : AUGUST 27, 2018

Memorandum of Decision

RCN Capital bought lender's title insurance from Chicago Title when RCN loaned money against a piece of Norwich real estate. Contrary to Chicago Title's certification, it turned out that someone else already had a first mortgage on the property. RCN foreclosed and later ended up with the property but had to pay the undiscovered first lien holder \$108,000.

With liability conceded, Chicago Title says this \$108,000 loss is the measure of RCN's damages. But RCN wants what the land appraised for during its foreclosure—\$304,000— minus the \$34,662.92 in taxes it had to pay when it finally acquired the property at a tax sale or a total damages award of \$269,337.08. Because Chicago Title's calculation is correct, judgment will enter in RCN's favor for \$108,000.

This matter is a simple question of the measure of damages under a title insurance contract. As our Supreme Court held in *Cohen v. Security Title & Guaranty Co.* in 1989, a title insurance policy is "an indemnity contract and as such it is designed

FILED

AUG 27 2018

HARTFORD J.D.

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on 8/27/18. AH/CO.

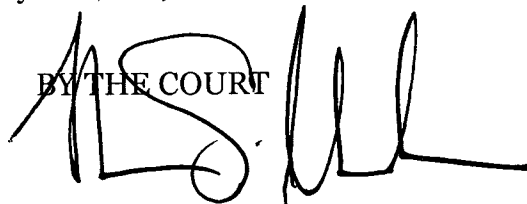
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to provide reimbursement for *actual* loss only.”¹ As this court —relying on 44 Am. Jur.2d Insurance § 1544 —held earlier in denying summary judgment, the measure of *actual* loss where an undiscovered lien damages an insured party is the amount by which the lender’s security is impaired.

Here, that amount is plainly the amount needed to pay off the undiscovered mortgage: \$108,000. Any other amount is not a reflection of the security impairment actually suffered by the insured but instead relies on a loss that is less actual and far closer to theoretical. RCN’s damage calculation is based upon its own expert’s estimate of the property’s value and an amorphous connection between this amount and the insured loss. RCN’s own self-interested estimate combined with its nebulous connection to anything Chicago Title did is too tenuous to be a measure of actual loss.

Therefore, judgment will enter in favor of plaintiff RCN Capital, LLC against Chicago Title Insurance Company for \$108,000.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Moukawsher, J.', written over a horizontal line.

Moukawsher, J.

¹ 212 Conn. 436, 439.