

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

WFG NATIONAL TITLE INSURANCE :  
COMPANY,

Plaintiff,

-vs-

PARADISE SETTLEMENT SERVICES :  
LLC, et al., :

Defendants.

Case No. 20 CV H 02 0078

**Judgment Entry Adopting the Magistrate's 11/23/21 Decision**

Magistrate Jamie A. LaPlante issued a magistrate's decision in this case on November 23, 2021. That decision recommended granting judgment in favor of Plaintiff WFG National Title Insurance Company ("WFG") on its indemnification claim in the amount of \$1,000,472.22, plus attorney's fees. It also recommended granting judgment to WFG on its claim for breach of fiduciary duty, through WFG's right of subrogation to assert Patch of Land Lending, LLC ("POL Lending")'s claim against Paradise Settlement Services LLC ("Paradise"), in the amount of \$1,000,472.22. Magistrate LaPlante recommended a total judgment of \$1,000,472.22, plus attorney's fees, on both claims. Finally, Magistrate LaPlante recommended judgment in Paradise's favor on WFG's negligence or breach-of-fiduciary-duty claim, to the extent WFG asserted a claim in its own right, based on the application of the economic-loss rule.

**Defendant Paradise's objections**

Paradise asserts objections to Magistrate LaPlante's factual finding that Paradise did not attempt to record the deed and mortgage until May 17, 2016 and a finding of law that Paradise's actions were not what a reasonably prudent closing agent would have done. To support its arguments, Paradise presents an affidavit of Paradise CEO Chris

McLucas and a copy of a March 31, 2016 check sent to the Office of the Delaware County Recorder. That check was cashed on April 11, 2016.

At trial, McLucas testified as Paradise's only witness. McLucas did not mention this evidence during his testimony. In his affidavit, McLucas states that he did not make any effort to retrieve the check until "immediately following the conclusion of the bench trial." (Paradise's 12/6/21 Objections to Magistrate's Decision Ex. A, 10/24/21 Aff. of Chris McLucas ¶ 2.) This dispute arose in May 2017. The case was originally filed on February 22, 2019 and re-filed on February 12, 2020. While the check was not electronically accessible to Paradise, Paradise had two opportunities for discovery and over four years to obtain the check. When Paradise finally made an attempt on October 22, 2021 to obtain the check, Paradise's bank provided a copy the very same day. (*Id.* at Ex. B ("Printed 10/22/2021").)

Civil Rule 53(D) governs objections to a magistrate's decision. Under Civil Rule 53(D)(4)(d), a judge may refuse to review additional evidence if the objecting party fails to demonstrate that it "could not, with reasonable diligence, have produced that evidence for consideration by the magistrate." *See also Dagostino v. Dagostino*, 165 Ohio App.3d 365, 2006-Ohio-723, 846 N.E.2d 582, ¶¶ 13-14 (4th Dist.) ("a trial court may refuse to consider additional evidence proffered upon an objection to a magistrate's decision"); *Porter v. Ferrall*, 11th Dist. Portage No. 2002-P-0109, 2003-Ohio-6685, ¶ 16 (declining to consider "newly discovered" evidence where there was no reason why it could not have been presented at trial).

I decline to consider Paradise's new evidence. Paradise had ample opportunity to present this evidence at trial. Nothing prevented Paradise from obtaining this evidence prior to trial other than its failure to exercise reasonable diligence. Paradise could have

obtained the check from its bank in a matter of hours but neglected to do so until after the presentation of the evidence at the bench trial.

### **WFG's objections**

Despite succeeding on its negligence claim on the alternative ground of asserting POL Lending's negligence claim under WFG's right of subrogation, WFG objects to judgment for Paradise on that claim asserted in its own right. WFG argues, as it did in closing argument at trial, that a negligence claim can be based on the negligent performance of Paradise's duty to record the mortgage. WFG further argues that this duty arises from a fiduciary relationship between Paradise and WFG.

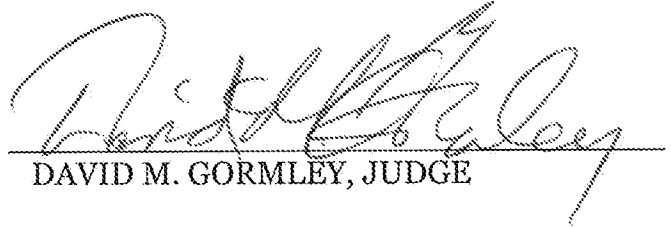
This issue was addressed in the Magistrate's Decision. Paradise's fiduciary duty to record the mortgage was to the mortgagee, POL Lending, not WFG as the title-insurance agency. (11/23/21 Magistrate's Decision 17–18.) WFG's negligence claim is barred by the economic-loss doctrine. I find no defect in the Magistrate's reasoning and conclusion of law on this claim.

### **Conclusion**

I have independently reviewed the Magistrate's Decision, and I see no error of law or other defects evident on the face of that decision. I now adopt the Magistrate's Decision as the judgment of the court.

Judgment is granted in favor of WFG on its indemnification claim and its breach-of-fiduciary-duty claim, asserted under its right of subrogation, in the amount of \$1,000,472.22, plus attorney's fees for the indemnification claim. Judgment is granted to Paradise on WFG's negligence or breach-of-fiduciary-duty claim to the extent WFG asserted a claim in its own right.

Costs must be paid by Paradise. This Court's entry will not become a final, appealable order until the Court calculates the amount of attorney's fees owed.



DAVID M. GORMLEY, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon all parties or their counsel through the Clerk's e-filing system, by regular mail, or by fax.