

Gipson v. Fleet Mortgage Group, Inc.

2002 WL 31681947 (S.D.Miss. November 7, 2002)

- **Force-Placed Insurance** - Homeowner's claims against lender not barred by statute of limitations, doctrine of res judicata or filed rate doctrine
- **Force-Placed Insurance** - Insurer is not a party to contract authorizing placement of insurance; thus, it owes no duty of good faith and fair dealing to borrowers

Felix Gipson obtained a mortgage loan from Mid-South Investment Corporation. The loan was subsequently assigned to Fleet Mortgage Corp. The language in the deed of trust required Gipson to maintain hazard insurance on the property and further provided that if he failed to meet to requirements under the deed of trust, Fleet could do so and pay whatever was necessary to protect the value of the property and its rights in the property, including payment of hazard insurance and other items. After Gipson's personal hazard insurance policy was terminated, Fleet purchased a residential hazard insurance policy from American Security Insurance Corporation. In 1998, while the American Security policy was in effect, Gipson's home was burglarized. Two window-unit air conditioners, a lawn mower and a weed eater were among the items stolen. American Security accepted the claim for the cost to repair the window frame resulting from the theft of the window air-conditioner units. American Security denied his claim for the stolen items on the basis that these items constituted personal property, which were not covered by the policy. After application of the \$250 deductible, Gipson was paid only \$16 on his claim to repair the window frames.

Ultimately, Fleet initiated foreclosure proceedings as a result of Gipson's failure to make his mortgage payments. Gipson was evicted from the premises, and Fleet took title to the property in November 1999. Gipson filed suit against American Security and Fleet, relating to the forced-placed hazard insurance. Gipson alleged wrongful conduct by both Fleet and American Security, challenging the adequacy, cost and "necessity" of the force-placed insurance coverage and the failure to disclose information as to the existence and particulars of the financial arrangement between American Security and Fleet. Gipson also claimed American Security inadequately investigated and denied his claim in bad faith.

All parties filed cross-motions for summary judgment. Fleet argued that Gipson's claims were barred by the statute of limitations because he received notice of the force-placed insurance more than three years prior to filing his complaint. Fleet also argued that the doctrine of res judicata barred Gipson's claims because they should have been raised in the foreclosure proceeding and that the filed-rate doctrine precluded him from attacking the insurance premium rate. The U.S. District Court for the Southern District of Mississippi denied Fleet's motion for summary judgment. Although Gipson knew of the force-placed insurance more than three years prior to filing suit, the court found that summary judgment was precluded by Gipson's argument that he could not have known that Fleet received increased fees and commissions as a result of the insurance. Thus, Gipson's lack of knowledge regarding the alleged financial relationship between American Security and Fleet precluded judgment as a matter of law on statute of limitations grounds or pursuant to the doctrine of res judicata. The court concluded that the filed rate doctrine did not apply because Gipson's claim challenged the lender's right, under the contract, to place insurance in a manner that caused its borrowers to pay unnecessary fees, not the insurance rate itself.

The court granted summary judgment on the claims against American Security for alleged breach of the covenant of good faith and fair dealing and fraud. The court found that American Security was not a party to the contract authorizing the placement of insurance; thus, it did not owe a duty of good faith and fair dealing to Gipson. After concluding that American Security did not have a

duty to disclose its financial relationship with Fleet, the court dismissed the fraud claim as well. The court also granted partial summary judgment on the insurance coverage questions and dismissed the bad faith claim. The court denied Gipson's motion.