

Custer v. Homeside Lending, Inc., No. 1011409 (Ala. Mar. 14, 2003)

Summary: force-place flood insurance; Raymond Custer and his wife, Elizabeth, own a residence in Birmingham, Alabama, which they purchased in 1970. The mortgage did not require the Custers to maintain flood insurance on the mortgaged property, but did provide that the Mortgagor "will keep the improvements now existing or hereafter erected on the mortgaged property, insured as may be required from time to time by the Mortgagee against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as may be required by the Mortgagee." The mortgage also provided that "If the Mortgagor fails to insure said property as hereinabove provided ... the Mortgagee may, at its option, insure said property" The Custer loan was transferred several times to various mortgage-loan-servicing companies over the course of its life; it was transferred to Homeside Lending, Inc. in 1989. WNC Insurance Services, Inc. ("WNC") had entered into a "Policy of Insurance Contract" with Homeside whereby WNC would "force-place" flood insurance for certain Homeside borrowers. Pursuant to this agreement, WNC agreed to bind coverage on properties encumbered by Homeside mortgages, and, if needed, to force-place flood insurance with certain underwriters. WNC had also entered into a "Servicing Agreement" with Homeside pursuant to which WNC agreed to provide flood audit services and Homeside agreed to purchase from WNC flood insurance Homeside forced-placed on the mortgages it serviced. Between 1993 and 2000, WNC issued approximately 6,000 force-placed flood-insurance policies on properties encumbered by mortgages serviced by Homeside. After receiving a series of letters concerning flood insurance and being notified that Homeside was force-placing flood insurance on their home, the Custers decided to pay off the outstanding balance of their mortgage loan. In July 1999, they calculated the remaining balance and submitted to Homeside a check in the amount of \$1,700.32. The complaint filed by the Custers in this action states that after receiving the Custers' check, Homeside responded by letter, stating that in order to pay off the loan balance, the Custers would have to pay an additional \$938.22 for hazard disbursement, which included \$667 as the annual premium for flood insurance. The complaint also states that in "late July 1999," the Custers made a "regular" payment in the amount of \$205.67 on the loan. Several weeks later, as also indicated by the complaint, the Custers received a letter from Homeside stating that the amount necessary to satisfy the loan would be \$197.98, which included earned premiums to date on the force-placed flood-insurance policy. In an August 4, 1999, notice from WNC, the Custers were informed that the force-placed insurance had been in effect on their property from April 21, 1999, to July 20, 1999, and that premiums of \$214.02 had accrued on the policy. Thereafter, the Custers mailed a cashier's check, on or about September 27, 1999, to Homeside in the amount of \$213, which, the Custers assert in their complaint, paid the loan in full. Homeside filed a motion for a summary judgment as to all claims with supporting evidentiary materials. The Custers sued, and the Custers' complaint, as amended, sought compensatory and punitive damages on claims of breach of contract, unjust enrichment, breach of duty of good faith and fair dealing, negligence, fraud by suppression, breach of a duty to a third-party beneficiary, and breach of an implied contract. Homeside filed a motion for a summary judgment as to

all claims with supporting evidentiary materials. The trial court entered a partial summary judgment in favor of Homeside on all claims except the Custers' breach-of-express-contract claim and third-party-beneficiary claim, without stating its reasons for denying the summary-judgment motion as to those claims. Subsequently, the trial court reconsidered Homeside's summary-judgment motion and, again without stating a rationale, entered a summary judgment on the case action summary sheet in favor of Homeside as to those claims as well. The trial court also denied class certification of the Custers' claims. The Custers then appealed. **HOLDING:** The Supreme Court held that because the outstanding principal on the Custers' loan at the time Homeside force-placed flood insurance on the mortgaged property was approximately \$2000, the minimum amount of flood insurance that Homeside could have force-placed on the Custers' property was \$2000. The Court held that in force-placing flood insurance in the amount of \$79,000, Homeside satisfied the minimum force-placement requirements of the National Flood Insurance Act, 42 U.S.C. § 4001 et seq. ("the NFIA"). The Court held that contractually, Homeside was given the right to force-place a higher amount, under the provisions of the mortgage authorizing it to force-place insurance against loss "in such amounts" as it might choose to require. The Court concluded that Homeside did not breach the terms of the mortgage agreement between it and the Custers by force-placing flood insurance in an amount that exceeded the outstanding principal on the Custers' loan. The Court affirmed the summary judgment in favor of Homeside, and therefore held that it need not address the issue of class certification.