

Munford v. Lee Servicing Company

Munford v. Lee Servicing Company, 999 P.2d 23 (Utah 2000), decided April 20, 2000, deals with the status of a force placed insurance policy imposed by a second mortgagee in the situation where the mortgagors replaced their lapsed policy with a policy retroactively effective as of date of the lapse.

In Munford, after the mortgagors allowed the insurance policy on their home to lapse, Lee ordered a force placed policy to cover the property and billed the mortgagors for the premium. Mortgagors contend, however, that prior to receiving the bill for the premium they provided notice to Lee that they replaced the primary policy covering the property. Shortly thereafter, the mortgagors' home sustained massive fire damage not completely covered by the mortgagors' primary policy. Thereafter, the mortgagors paid the force placed premium demanded by Lee. The mortgagors sued Lee for the proceeds of the force placed policy to make up the difference between the depreciated value and the replacement costs of the property, but Lee claimed that the force placed policy was void at inception because the mortgagors' obtained replacement insurance retroactively effective from the date of the lapse.

In reviewing the language of the force placed policy and the timing of the relevant events, the Utah Court of Appeals reversed the trial court's decision which dismissed the mortgagors' claim. The Court ruled that a question of fact existed as to whether the force placed policy was void by its terms or whether it operated as supplemental coverage on the property. Lee argued that the determinative language was the policy's "other insurance" clause which stated that if the coverage provided by the policy is "also provided by other insurance, the coverage under this policy will terminate as of the effective date of the other insurance and the applicable premium refunded." The Court, however, focused its attention on the policy as a whole and its intent to provide excess insurance for second mortgages. The Court found the mortgagors' argument that the force placed policy provided different, supplemental coverage, and not replacement coverage, had merit. In reversing the trial court, the Court relied on the ambiguity between policy's intent and the "other insurance" provision, the fact that Lee charged the mortgagors for the force placed policy premium after it received notice the mortgagors obtained insurance, and the differences in the copies of the forced placed policy produced by each of the mortgagors and Lee, as sufficient to show the existence of a question of fact as to whether the force placed policy was in effect.