



# safeguards

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## A mortgage company may still be extended coverage; even when an insured has none.

By Brian E. Fischer

On March 6, 2014, the Michigan Court of Appeals released the published opinion of *Wells Fargo Bank, N.A. vs. Elizabeth Null and Auto Owners Insurance Company* (Michigan Court of Appeals Number 312485, \_\_\_ Mich. App. \_\_\_ (2014)).

After extensive analysis, the Court held that the standard mortgage clause of the Auto Owners insurance policy afforded coverage to Wells Fargo, the mortgagee, even though the claim made by a resident of the premises had been denied based upon the insured not residing at the residence premises.

This case involved an insurance dispute after a house fire. Lonnie Null, brother-in-law to Elizabeth Null, obtained a homeowner's insurance policy from Auto Owners covering his residence. Wells Fargo held the mortgage note.

Three years after purchase, in 1997, Lonnie executed a real estate contract with his sister-in-law Elizabeth. The mortgage was never assigned to her and the Auto Owners insurance policy remained in Lonnie's name through the date of loss. The fire occurred in April 2009, years after Lonnie had last lived at the residence.

Elizabeth Null made a claim to Auto Owners. The company advised Wells Fargo that fire had damaged the residence and that a claim had been filed. In late 2009, Auto Owners denied Elizabeth's claim because Lonnie (the named insured) had not used the residence premises principally as his private residence.

Elizabeth sued Auto Owners for breach of contract. Both Wells Fargo and Auto Owners were made defendants to that action. On December 2, 2010, the trial court entered an order granting summary disposition in favor of defendant Wells Fargo.

After bench trial, the trial court granted summary disposition in favor of Auto Owners on October 5, 2011. Elizabeth appealed to the Court of Appeals. An unpublished per curiam Court of Appeals opinion stated that the policy did not provide coverage to Elizabeth because the insured (Lonnie) did not reside at the property (citing *Heniser vs. Frankenmuth Mutual Insurance Company*, 449 Mich 155, 161 (1995)).

### SECRET WARDLE NOTES:

The bottom line in *Wells Fargo Bank, N.A. vs. Elizabeth Null and Auto Owners Insurance Company* is that even though an insured's claim may be properly denied based upon the terms of the policy, denial will not extend to a mortgagee if the insurance policy contains a standard mortgage clause.

The lien holder was not bound by the exclusions within the policy set in place by the insurer because the Court interpreted the policy as providing a separate or independent insurance contract between the lien holder and the insurer.

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As part of its ruling, the Court stated that the doctrine of collateral estoppel barred the relitigation of the exclusion for failing to reside in the property.

While this case was still proceeding, Wells Fargo filed a complaint against Auto Owners and Elizabeth on June 13, 2011, asserting entitlement to any insurance proceeds recovered by Elizabeth. On February 28, 2012, Auto Owners moved for summary disposition, asserting that the first step in interpreting an insurance policy is to determine whether coverage is afforded to any named insured by virtue of the satisfaction of all conditions precedent to coverage. The trial court entered an order on July 19, 2012, finding that, "The insurance policy at issue does not provide coverage to plaintiff Wells Fargo Bank for damages to the structure arising from the fire of April 11, 2009." The Court further finds that, "The Order of December 2, 2010...does constitute a dismissal of all claims Wells Fargo may have had arising from the fire of April 11, 2009."

Wells Fargo appealed this decision. Most of the opinion deals with determining whether the mortgage clause in the Auto Owners insurance policy is a "standard" or an "ordinary" mortgage clause. The "ordinary" mortgage clause makes the insurer simply an appointee to receive the insurance fund to the extent of its interest. The "standard" mortgage clause grants the mortgagee greater rights including that the lien holder is not held to the exclusions available to insurer. The greater rights afforded the lien holder are based upon the reasoning that there is a separate or independent contract between the lien holder and the insurer.

The Court concluded the Auto Owners policy contained a "standard" mortgage clause. The Court also said that such a clause results in two contracts, one between the lien holder and the insurer and one between the insurer and the insured. Under those greater rights afforded the mortgagee in a standard clause, the Court then held that even though the insured's act of ceasing to reside in the residence premises resulted in no coverage for Elizabeth Null, Wells Fargo was still entitled to coverage under the policy.

The grant of Summary Disposition to Auto Owners was reversed and the case was remanded to the trial court. The trial court was instructed to determine whether there was any genuine issue of material fact as to whether Wells Fargo complied with the terms of the policy.

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