

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 3 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EQUITY INCOME PARTNERS, LP, an
Arizona Limited Partnership; GALILEO
CAPITAL PARTNERS LIMITED, a
Cayman Islands Exempted Company,

Plaintiffs-Appellants,

v.

CHICAGO TITLE INSURANCE
COMPANY, a Delaware Corporation,

Defendant-Appellee.

No. 14-15388

D.C. No. 2:11-cv-01614-SMM

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Argued March 18, 2016
Submitted March 3, 2017
San Francisco, California

Before: KLEINFELD, RAWLINSON, and HURWITZ, Circuit Judges.

On July 12, 2016, we certified the following questions of law to the Arizona
Supreme Court pursuant to Ariz. Rev. Stat. § 12-1862:

1. When a lender purchases property by full-credit bid at a trustee's
sale, does Section 9 [of the standard form lender's title insurance

* This disposition is not appropriate for publication and is not precedent except
as provided by Ninth Circuit Rule 36-3.

policies] apply, or does Section 2 apply?

2. Is a full-credit bid at a trustee's sale a "payment" or "payment[] made" under Sections 2 or 9 of the policies?
3. To what extent does a full-credit bid at a trustee's sale either (a) terminate coverage under Section 2(a)(i) of the policies, or (b) reduce coverage under Section 2 and any possible liability under Section 7?

Equity Income Partners, LP v. Chi. Title Ins. Co., 828 F.3d 1040, 1045 (9th Cir. 2016).

On February 7, 2017, the Arizona Supreme Court answered the certified questions as follows:

1. Section 2 applies when a lender purchases property by full-credit bid at a trustee's sale.
2. A full-credit bid at a trustee's sale is not a "payment" under Sections 2 or 9 of the policy.
3. The full-credit bid neither terminates nor reduces coverage under Section 2 or Section 7.¹

Equity Income Partners, LP v. Chi. Title Ins. Co., No. CV-16-0162-CQ, --- P.3d ----,

¹ The footnote in the Arizona Supreme Court opinion stated:

As explained below, the trustee sale may reduce or even eliminate a title insurer's ultimate liability under its policy. However, this reduction or elimination is not a function of the credit bid amount. Rather, the amount of the reduction, if any, is the fair market value of the property the lender receives as a result of its credit bid or, if the property is acquired by a third party, the amount that party pays for the property.

2017 WL 490398, at *1 (Ariz. 2017).

In light of the Arizona Supreme Court's answers to the certified questions, we vacate the district court's summary judgment and remand for further proceedings consistent with those answers. Costs are awarded to appellants. Fed. R. App. P. 39(a).

VACATED and REMANDED.