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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BANC OF CALIFORNIA NATIONAL ASSOCIATION, Plaintiff-Appellant, v. FEDERAL INSURANCE COMPANY, Defendant-Appellee.	No. 21-56179 D.C. No. 8:20-cv-00132-DOC-DFM MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted November 10, 2022
Pasadena, California

Before: MURGUIA, Chief Judge, and PARKER[**] and LEE, Circuit Judges.

Banc of California National Association ("Banc") appeals the district court's order granting Federal Insurance Company's ("Federal") motion for summary judgment. This dispute stems from a forgery insurance policy (the "Policy") Banc

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

[**] The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

purchased from Federal. The Policy provides Banc with coverage from losses suffered by forgery provided that the Policy's conditions—consisting of six elements—are met.[1] After purchasing the Policy, Banc made a fifteen-million-dollar loan in reliance on a document, a Bank Account Control Agreement (the "Control Agreement"), later determined to be forged.

The Control Agreement gave Banc the ability to control the borrower's bank account at Northern Trust, a different bank, in the event the borrower defaulted on its loan repayment obligations. Unbeknownst to Banc, the Northern Trust account was fictitious, and the Control Agreement bore the forged signature of a Northern Trust employee. After Banc contacted Federal to obtain coverage for the losses suffered from the forgery under the Policy, Federal denied coverage. Banc then sued Federal asserting breach of contract and breach of the covenant of good faith and fair dealing claims. After discovery, both parties moved for summary judgment.

The district court granted summary judgment on the breach of contract claim in favor of Federal, because it found Banc had not met the Policy's first element.[2]

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[1] The six elements required to obtain coverage under the Policy are: (1) the forgery appeared on one of the eight listed types of collateral, including, a "Security Agreement" or an "Evidence of Debt"; (2) the loan was issued "in good faith"; (3) the forged document was "original"; (4) the loss was one "resulting directly" from giving the loan; (5) the document "b[ore] a Forgery"; and (6) the insured relied on the forged document in making a loan.

[2] Banc only appeals the district court's grant of summary judgment on the breach of contract claim.

The district court found that as to the first element, the Control Agreement did not qualify as an Evidence of Debt or as a Security Agreement, as Banc contended, so the forgery did not appear on one of the eight permitted types of collateral. The district court also discussed the "result[ed] directly" element (element (4)), and reasoned that contrary to Federal's position, the loss *did* "result[] directly" from the Control Agreement forgery. Nevertheless, the district court ruled in favor of Federal because it found Banc did not establish the first element. The district court did not reach the other four elements.

We review the district court's grant of summary judgment *de novo*. *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017). We reverse the district court's conclusion that the Control Agreement did not constitute a Security Agreement, and remand for the district court to consider the other elements required for coverage in the first instance, including the "resulting directly" element.

Because this is a California breach of contract claim grounded on diversity jurisdiction, this Court must apply California law when interpreting the Policy. *PMI Mortg. Ins. Co. v. Am. Int'l Specialty Lines Ins. Co.*, 394 F.3d 761, 764–65 (9th Cir. 2005), *opinion amended on denial of reh'g,* No. 03-15728, 2005 WL 553004 (9th Cir. Mar. 10, 2005). Under California law, this Court "must construe insurance policy terms so as to give effect to the 'mutual intention' of the parties at the time the policy was issued, and this intent should be inferred, to the extent possible,

'*solely from the written provisions of the [policy] contract.*'" *Id*. at 764 (quoting *MacKinnon v. Truck Ins. Exch.*, 31 Cal. 4th 635, 647 (2003). "The California Supreme Court has consistently held that insurance policies are to be 'interpreted broadly so as to afford the greatest possible protection to the insured.'" *Id*. at 765 (quoting *MacKinnon*, 31 Cal. 4th at 648).

Under element one, the Policy states that to be reimbursed for forgery, the loss must result from the insured's reliance on an original of one of eight listed examples of collateral. The Policy defines Security Agreement as "an agreement which creates an interest in personal property or fixtures and which secures payment or performance of an obligation." But the Policy does not specify what sort of "interest" has to have been retained in the personal property or fixture in order for the Control Agreement to qualify as a Security Agreement.

Because "California law instructs that such interpretive quandaries be resolved in favor of the insured and against the insurer," this Court must resolve the ambiguity around the type of interest required in the Security Agreement definition in favor of Banc. *Id*. Contrary to the district court's conclusion, the Control Agreement constitutes a Security Agreement because it creates *an* interest—a possessory interest—in the Northern Trust account. This Court therefore reverses the district court's summary judgment ruling on this ground, and remands for the district court to consider the five other elements.

REVERSED and REMANDED.