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Jury rejects bank's suit over loan

The $55 million lawsuit has the real estate and banking industries watching closely.

By Jason W. Armstrong

RIVERSIDE - A jury here rejected a $55 million lawsuit against a title company that a bank accused of committing fraud and fiduciary duty breaches in connection with a multimillion-dollar loan on a failed home development in Hemet.

A case watched closely by the real estate title insurance, escrow and banking industries, it's part of a wave of litigation from banks facing criticism of their lending activity during the mortgage meltdown. In an attempt to restore money lost in the housing bust and recession, banks are increasingly filing lawsuits attempting to collect damages from title companies that underwrote and insured their loans.

On Wednesday, the Superior Court panel turned aside Central Pacific Bank's arguments that Fidelity National Title Company and Fidelity National Title Insurance Company misled the bank about the scope of the title policy and the collateral for the loan and that it failed to comply with escrow instructions - issues Central Pacific alleged led it to make the loan that ultimately defaulted.

"There was a lot at stake here," said Eric P. Early, a partner at Early Sullivan Wright Gizer & McRae LLP who was lead trial attorney for Fidelity. "You had a bank bringing a lawsuit based on a large failed loan and trying essentially, from our position, to recoup its loss on the backs of a title insurance company and an underwritten title company."

"This is a major victory for my clients," he added. "The jury got it 100 percent right, and we're very grateful for that."

Craig S. Bloomgarden, an attorney for Central Pacific and a partner with Manatt, Phelps & Phillips LLP, said Friday that he wasn't authorized to comment on the matter. No one else with the firm responded to a request for comment.

According to Early, the jury rejected the bank's request for $55 million in damages, an amount that included the $50 million in compensatory damages and interest, punitive damages and about $5 million in attorney fees for Manatt.

The underlying dispute centered on Central Pacific's 2006 loan of $35 million to PCG-Peppertree LP to build a 456-unit home development for seniors in Hemet called Peppertree. Two years later, with the housing crash in full freefall, the borrower defaulted on the loan.

In trial arguments, Central Pacific contended Fidelity acted improperly in underwriting the loan, including failing to inform the bank that the borrower didn't have title to the entire tract. In addition, the bank alleged the title company's legal description of the project didn't cover the whole development and that its title policy was insufficient.

According to Central Pacific, after the default, the title company's insurance division refused to insure the project. The bank contended it was unable to recoup its losses through a foreclosure proceeding and had to incur millions in extra expenses, including paying for a receiver to maintain the property.

At trial, Fidelity said it bore no responsibility for the bank's loss.

"The bank's underwriting process was flawed from the start, the money never should have been loaned, and even after the loan was made, the Bank could have, but failed, to stop continuing to disburse the entirety of the loan proceeds to Peppertree," wrote Kevin S. Sinclair, co-counsel for Fidelity, in a trial brief. "Fidelity, of course, had nothing to do with any of these decisions or occurrences."

The 2-month-long trial was held before Judge John W. Vineyard. The case is *Central Pacific Bank v. Fidelity National Title Insurance Company,* RIC525131 (Riverside County Super. Ct., filed 2009).