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Fidelity Wins Verdict In \$55M Suit Over Development Loan

By **Sindhu Sundar**

Law360, New York (April 27, 2012, 5:08 PM ET) -- A California state jury on Tuesday handed a verdict in favor of Fidelity National Title Co. in a \$55 million lawsuit by Hawaii-based Central Pacific Bank over an unpaid construction loan in which Fidelity was the escrow agent.

Central Pacific had claimed that Fidelity had obtained an inadequate title insurance policy from its sister firm Fidelity National Title Insurance Co. to cover a \$37 million loan that Central Pacific had given a unit belonging to Southern California developer William Lo in 2006. The policy was used to finance the construction of a residential development in Hemet, Calif., according to its second amended complaint.

The bank had claimed also that Fidelity had also wrongfully failed to provide insurance coverage under that policy, but after a trial that lasted less than two months, the jury delivered a unanimous defense verdict in favor of both Fidelity defendants on all counts, according to court documents.

"We're obviously very happy with the jury's decision," Eric Early of Early Sullivan Wright Gizer & McRae LLP, an attorney for Fidelity, said Friday. "It was a hard fought lawsuit and we were thrilled to prevail because my clients did not do anything wrong."

William Lo's unit PCG-Peppertree LP allegedly had not repaid the loan in 2008, and discarded the development with millions of dollars of mechanic's liens from unpaid work that the project's contractors had done, according to Central Pacific's complaint.

Fidelity had argued that Central Pacific's underwriting process was flawed and that it should not have loaned the money to Peppertree, which defaulted in January 2008 and whose principal Lo filed for bankruptcy protection, according to Fidelity's March trial brief.

Central Pacific had projected that its loan would help Peppertree build and sell more than 400 housing units, and repay the loan, but after two years, only 29 units had been built and only 13 sales had closed, according to Fidelity, which argued that the property had lost value because of construction defects and other related issues.

"The cause of the bank's loss has nothing at all to do with Fidelity," the firm said in the brief. "Undaunted, however, the bank — with \$37 million gone and a worthless property as security — has fashioned its creative lawsuit to seek a bailout from Fidelity for its disastrous underwriting practices."

Central Pacific had argued meanwhile that Fidelity had closed the loan transaction without authorization, violated its escrow requirements and given misleading reports about the property, according to its trial brief.

"Fidelity repeatedly provided the bank with reports which described the subject property as 'all lots' with the [tract] even though it now claims that it never intended to insure the bank's interest in the entire tract and that it knew that the borrower did not even have record title to the entire tract," Central Pacific said in the brief.

Central Pacific had sought roughly \$50 million in damages, along with several million dollars in attorneys' fees and punitive damages, according to the firm.

An attorney for Central Pacific could not immediately be reached for comment Friday.

Fidelity was represented by Eric P. Early, William A. Wright, Christopher I. Ritter, Kevin S. Sinclair and Sophia Lau of Early Sullivan Wright Gizer & McRae LLP.

Central Pacific Bank was represented by Manatt Phelps & Phillips LLP.

The case is Central Pacific Bank v. Fidelity National Title Insurance Co., case number RIC525131, in the Superior Court of California, County of Riverside.

--Editing by Katherine Rautenberg.

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