NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SOON HAN PAK et al., Plaintiffs and Appellants, v. FIRST AMERICAN TITLE INSURANCE COMPANY, Defendant and Respondent.	B297647 (Los Angeles County Super. Ct. No. 18STCV04840)

APPEAL from a judgment of the Superior Court of Los Angeles County, John P. Doyle, Judge. Affirmed.

Pasich, Shaun H. Crosner, Nicolas A. Pappas, and Anamay M. Carmel, for Plaintiffs and Appellants.

Early Sullivan Wright Gizer & McRae, William A. Wright, for Defendant and Respondent.

This appeal primarily concerns the interpretation of a condition of coverage in a title insurance policy that plaintiffs and appellants Soon Han Pak and Chung Huyk Pak (the Paks) purchased to cover a piece of commercial property. When the Paks submitted an insurance claim, defendant and respondent First American Title Insurance Company (First American) concluded coverage had terminated years earlier when the Paks quitclaimed the commercial property to a limited liability company of which they were the sole members. In response to First American's denial of coverage, the Paks sued on breach of contract and related causes of action. The trial court sustained First American's demurrer without leave to amend, and we consider whether (1) the Paks maintained an interest in the property after transferring it to the limited liability company (as required by the condition of coverage) and (2) whether the Paks' later rescission of the quitclaim transfer can operate to reestablish coverage.

I. BACKGROUND

A. The Insurance Dispute

The Paks purchased commercial property located at 1232 E. Washington Blvd. in Los Angeles, California (the Property) in 2003. In connection with the purchase, they bought a title insurance policy from First American (the Policy). The named insureds under the Policy were "Chung Hyuk Pak and Soon Han Pak."

Five years later, in 2008, the Paks formed 1232 East Washington Blvd. Property, LLC (the LLC). They were the sole members of the LLC and were jointly responsible for its management. In August of that year, the Paks recorded a

quitclaim deed transferring the Property to the LLC. The quitclaim deed represented "[t]he grantors and grantees in this conveyance are comprised of the same parties who continue to hold the same proportional interests in the property . . . ."

In 2017, the real property across the street from the Paks' Property was acquired by a group of third parties including Gage & 62nd LLC; C&W Investment, LLC; Centerwa Investments, LLC; and Yousef Golbahary (collectively, Gage). The next year, Gage informed the Paks that a portion of the Property was burdened by a non-exclusive irrevocable easement in Gage's favor. According to Gage, the easement grants it the right to use a parking lot on the Property and allow its customers to park there. The Paks maintain they were not aware of the easement when they purchased the Property.

The Paks notified First American of Gage's claims and made a claim under the Policy. First American requested additional information, which the Paks provided. In April 2018, First American sent the Paks a letter denying coverage because the quitclaim deed to the LLC divested the Paks of any estate or interest in the Property, and the Policy's coverage—which only continued in favor of an insured so long as the insured retained an estate or interest in the land—had lapsed.

Later that year, Gage sued the LLC and Soon Han Pak alleging causes of action for quiet title and declaratory relief in connection with use of the easement.[1] Gage served a lis pendens regarding its claims and recorded it in Los Angeles County.

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[1] Gage later amended the complaint to add Chung Hyuk Pak as a defendant.

Plaintiffs tendered the Gage lawsuit and lis pendens to First American for coverage of a defense.

In the meantime, the Paks (in their capacity as the members of the LLC) sent a letter to themselves (in their individual capacity) asking that the Paks (in their personal capacity) rescind the quitclaim deed or, failing that, indemnify and defend the LLC in the Gage lawsuit. Plaintiffs sent a copy of this demand letter to First American. First American acknowledged receipt, indicated the matter was under review, and advised the Paks to take whatever steps they believed were necessary to defend themselves while its review was ongoing.

In August 2018, the Paks and the LLC signed an agreement rescinding the quitclaim deed. The Paks provided First American with a copy of the agreement. The following month, First American again denied insurance coverage and explained the Policy had been voided by the quitclaim deed from the Paks to the LLC and the rescission agreement could not revive coverage.

B. The Pertinent Policy Provisions at Issue

The Policy names "Chung Hyuk Pak and Soon Han Pak" as the insureds. Schedule A to the Policy states that the estate or interest in the land covered by the Policy is "A FEE" and describes title to the Property as vested in "CHUNG HYUK PAK AND SOON HAN PAK, HUSBAND AND WIFE AS JOINT TENANTS."

As relevant here, and subject to specified exclusions, exceptions, and conditions, the Policy insures against loss or damage incurred by reason of title to the estate or interest being vested other than as stated in the Policy or a defect in or lien or

encumbrance on the title. The Policy also states First American will pay the costs of defense for an insured as provided in the Policy's conditions and stipulations.

Section 2 of the Policy's listed conditions and stipulations ("Condition 2") is central to the issues raised on appeal and addresses the continuation of insurance after conveyance of title. It states: "The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land or (ii) an indebtedness secured by a purchase money mortgage given to the insured."

C. This Lawsuit

In November 2018, the Paks sued First American alleging causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief. The Paks alleged First American breached its obligations under the Policy by refusing to defend the Paks against Gage's claims, failing to conduct a full and thorough investigation of the claims and denying coverage based on an incomplete investigation, failing to fully inquire into possible bases for coverage, denying coverage on grounds that are contrary to the Policy and law, taking a coverage position contrary to the Paks' reasonable expectations of coverage, giving greater consideration to its interests than the Paks', and failing to have appropriate claims

handling guidelines. The breach of implied covenant of good faith and fair dealing and declaratory relief claims rested on essentially the same allegations.

First American demurred to the complaint, arguing all three causes of action failed to state facts sufficient to state a proper claim. In short, First American contended the Paks' voluntary transfer of the Property to the LLC terminated coverage under Condition 2 in the Policy. First American argued that by transferring title to the LLC via a quitclaim deed, which carries no warranties, the Paks did not retain an interest in the Property as required by Condition 2. First American further argued the rescission agreement did not resurrect coverage because coverage had already terminated when the quitclaim deed was executed and the legal effect of rescinding the contract affected only the parties to that contract.

In opposition to the demurrer, the Paks argued their transfer of the Property to the LLC did not terminate coverage because they were the only members of the LLC and the quitclaim deed stated each of them would retain his or her same proportional interest in the Property after transfer. The Paks contended Condition 2 was akin to a policy exclusion that should be construed narrowly against First American and in favor of coverage, and under their reasonable interpretation of the condition, they were entitled to coverage because they had maintained an indirect interest in the Property as members of the LLC. The Paks further argued the rescission of the quitclaim transfer extinguished the contract and restored them to their pre-transfer positions, meaning they had maintained an unbroken interest in the Property since its purchase.

The trial court sustained the demurrer, finding the Policy ceased to be in force when the Paks transferred the Property to the LLC, which was years before the Paks sought coverage. In so ruling, the trial court reasoned an LLC and its members are distinct—and the Paks, as LLC members, did not have the requisite interest in the property of the LLC. The court also rejected the Paks' rescission argument, explaining the Paks had not cited authority demonstrating the rescission of a quitclaim deed revives a terminated title insurance policy.

II. DISCUSSION

In the context of the policy as a whole, and under established California law concerning the attributes of limited liability companies, the trial court correctly concluded Condition 2 unambiguously terminated the Policy when the Paks transferred the Property to the LLC. The Policy's Schedule A states the estate or interest in land that the Policy covers is a fee interest, and that fee interest was fully transferred to the LLC by quitclaim long before the Paks made their insurance claim. (*Soares v. Steidtmann* (1955) 130 Cal.App.2d 401, 404 ["A quitclaim deed, of course, passes whatever interest, legal or equitable, that the grantor possesses at the time of the grant"].) Because it is well established that a limited liability company is an independent legal entity and the members of such a company have no interest, much less a fee interest, in the company's property, the transfer of the Property to the LLC triggered Condition 2 and terminated the Policy. The subsequent rescission of the quitclaim deed did restore the Paks and the LLC to their pre-contract statuses vis-à-vis each other, but it did not erase the consequences and effects of originally executing the

quitclaim deed, including the violation of Condition 2 and termination of coverage.

A. Standard of Review

We review de novo an order sustaining a demurrer without leave to amend. *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) "[W]e accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice." (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 924, fn. omitted.)

B. The Breach of Contract Cause of Action

1. Title insurance and the duty to defend

Title insurance is a contract "insuring, guaranteeing or indemnifying owners of real or personal property . . . against loss or damage suffered by reason of: [¶] (a) Liens or encumbrances on, or defects in the title to said property; [¶] (b) Invalidity or unenforceability of any liens or encumbrances thereon; or [¶] (c) Incorrectness of searches relating to the title to real or personal property." (Ins. Code, § 12340.1.) "Title insurance, as opposed to other types of insurance, does not insure against future events. It is not forward looking. It insures against losses resulting from differences between the actual title and the record title as of the date title is insured. The policy does not guarantee the state of the title. Instead, it agrees to indemnify the insured for losses incurred as a result of defects in or encumbrances on the title. [Citation.]" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 41.)

"The duty to defend in a title insurance case is governed by the same principles which govern the duty to defend under general liability policies." (*Lambert v. Commonwealth Land Title Ins. Co.* (1991) 53 Cal.3d 1072, 1077.) "'[A] liability insurer owes a broad duty to defend its insured against claims that create a potential for indemnity. . . . [T]he carrier must defend a suit which *potentially* seeks damages within the coverage of the policy.' [Citation.]" (*Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 295.)

"'[T]he determination whether the insurer owes a duty to defend usually is made in the first instance by comparing the allegations of the complaint with the terms of the policy. Facts extrinsic to the complaint give rise to a duty to defend when they reveal a possibility that the claim may be covered by the policy.' (*Waller v. Truck Ins. Exchange, Inc.*[(1995)] 11 Cal.4th[1,] 19[(*Waller*)].) 'If, at the time of tender, the allegations of the complaint together with extrinsic facts available to the insurer demonstrate no potential for coverage, the carrier may properly deny a defense.' [Citation].)" (*Medill v. Westport Ins. Corp.* (2006) 143 Cal.App.4th 819, 828.)

2. Policy interpretation

"The principles governing the interpretation of insurance policies in California are well settled. 'Our goal in construing insurance contracts, as with contracts generally, is to give effect to the parties' mutual intentions. [Citations.] "If contractual language is clear and explicit, it governs." [Citations.] If the terms are ambiguous [i.e., susceptible of more than one reasonable interpretation], we interpret them to protect "'the objectively reasonable expectations of the insured.'" [Citation.]

Only if these rules do not resolve a claimed ambiguity do we resort to the rule that ambiguities are to be resolved against the insurer. [Citations.] The 'tie-breaker' rule of construction against the insurer stems from the recognition that the insurer generally drafted the policy and received premiums to provide the agreed protection. [Citations.]" (*Minkler v. Safeco Ins. Co. of America* (2010) 49 Cal.4th 315, 321-322 (*Minkler*).)

We "look first to the language of the contract in order to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it. [Citations.]" (*Waller*, *supra*, 11 Cal.4th at 18.) The parties' "intent is to be inferred, if possible, solely from the written provisions of the contract. [Citation.] The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' [citation], controls judicial interpretation. [Citation.] Thus, if the meaning a lay person would ascribe to contract language is not ambiguous, we apply that meaning." (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822.) "'A policy provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable.' [Citation.]" (*Waller*, *supra*, 11 Cal.4th at 18.)

3. Condition 2 is unambiguous and triggered termination of the Policy as a result of the quitclaim deed

With the foregoing principles in mind, we turn to the heart of this dispute. Condition 2 states coverage under the Policy "shall continue . . . in favor of an insured only so long as the insured retains an estate or interest in the land . . . ." When

construing the Policy as a whole (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 454), this "estate or interest in the land" language in Condition 2 is not ambiguous. Schedule A of the Policy uses the exact same phrasing when defining the "estate or interest in the land" covered by the Policy, namely, a fee interest. The parity of phrasing is a strong interpretive indication that the interest Condition 2 required the Paks to maintain to keep coverage is the exact same interest the Policy covers: a fee interest. (See generally *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 841, fn. 3 ["ownership of real property in fee simple absolute is the greatest possible estate"].)

The question, then, is whether the Paks as members of the LLC continued to possess a fee interest in the Property once it was quitclaimed to the LLC. Contrary to the Paks' contentions, this has little to do with whether one characterizes the interest they were required to maintain as direct or indirect, and much to do with the legal effect of their decision to quitclaim the Property to the LLC. Two legal concepts inform our analysis. First, a limited liability company is a legal entity separate from its members. (Corp. Code former §§ 17003 and 17300.)[2] A member

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[2] The Legislature enacted the Beverly-Killea Limited Liability Company Act (former § 17000 et seq.), which authorized the formation of limited liability companies, in 1994 (Stats. 1994, ch. 1200, § 27, p. 625). In 2012, it adopted the California Revised Uniform Limited Liability Company Act (Revised Act; § 17701.01 et seq.) to replace the Beverly-Killea Act. (Stats. 2012, ch. 419, §§ 19, 20.) The Revised Act became operative on January 1, 2014. (§ 17713.13.) Pursuant to its own terms, the Revised Act only applies to acts or transactions by a limited liability company or its members or managers on or after its operative date. "The

of a limited liability company "has no interest in specific limited liability company property."[3] (§ 17300.) Instead, he or she has membership and economic interests in the limited liability company itself, which "constitute personal property of the member. . . ." (§ 17300; see also *Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal.App.4th 871, 886; *Kwok v. Transnation Title Ins. Co.* (2009) 170 Cal.App.4th 1562, 1570[(*Kwok*)].) Second, "'[a] quitclaim deed transfers whatever present right or interest the grantor has in the property. [Citation.]' [Citations.]" (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239.)

Thus, after the quitclaim deed was signed, it was the LLC that held a fee interest in the Property. The Paks were left with only their interest in the LLC.[4] The Paks' argument that they

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prior law governs all acts or transactions by a limited liability company or by the members or managers of the limited liability company occurring, and any operating agreement or other contracts entered into by the limited liability company or by the members or managers of the limited liability company, prior to January 1, 2014." (Corp. Code, § 17713.04, subd. (b).) The provisions of the Beverly-Killea Act thus apply to the Paks' transfer of the Property to the LLC.

[3] In their reply brief, the Paks argue the language "has no interest" cannot be read to indicate the Legislature intended to announce a rule that a member of an LLC has no indirect interest in LLC property. To the contrary, that the Legislature did not modify the word "interest" with any adjectives indicates it meant the phrase to be read broadly. In other words, no means no.

[4] This is the trade-off inherent in forming a limited liability company. The Paks gave up any interest in specific LLC

nonetheless maintained an "indirect" interest in the Property is therefore doubly deficient. The very nature of a limited liability company means they retained *no* interest in the Property, and regardless, they certainly did not retain the fee interest that the Policy requires.

The other arguments the Paks offer in no way undermine this conclusion. The Paks argue they continued to hold interests in the Property after signing the quitclaim deed because the deed itself stated "[t]he grantors and grantees in this conveyance are comprised of the same parties who continue to hold the same proportional interests in the property . . . ." That the Paks' personal property or membership interests in the LLC were held in the same proportions as the individual ownership interests they previously held in the Property, however, does not mean they maintained a fee interest in the Property as required by Condition 2.

Relatedly, the Paks also rely on Revenue and Taxation Code section 62 to contend they held an interest in the Property after the quitclaim deed was signed. That statute states certain transfers between individuals and legal entities do not qualify as changes in ownership, but the statute applies only for purposes of determining whether a transfer triggers a tax reassessment under Proposition 13. (Rev. & Tax Code, § 62; *Pacific Southwest*

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property and benefitted from the ability to "participate in the management and control of the company" while protected by "limited liability for the company's debts and obligations to the same extent enjoyed by corporate shareholders. [Citations.]" (*Kwok*, *supra*, 170 Cal.App.4th at 1571.)

Realty Co. v. County of Los Angeles (1991) 1 Cal.4th 155, 160.) Whether a transfer constitutes a change in ownership for Proposition 13 purposes has no bearing on whether the Paks maintained an interest as required by the Policy.

Finally, the Paks cite to *McAdam v. State Nat'l Ins. Co.* (S.D.Cal. 2014) 28 F. Supp. 3d 1110, 1117 for the proposition that a member of an LLC may have an insurable interest in company property. *McAdam*, of course, is not controlling authority, and the question of whether the Paks might theoretically have had an insurable interest as members of the LLC is not the question we decide here. The question is whether their interest in the LLC constituted an interest in the Property as required by Condition 2. For reasons already discussed, it does not.

4. The alleged rescission of the quitclaim deed does not undo the triggering of Condition 2

"A contract may be rescinded if all the parties thereto consent." (Civ. Code, § 1689, subd. (a).) "A contract is extinguished by its rescission." (Civ. Code, § 1688.) The purpose of rescission is "'to restore both parties to their former position as far as possible' [citations] and 'to bring about substantial justice by adjusting the equities between the parties' despite the fact that 'the status quo cannot be exactly reproduced.' [Citations.]" (*Runyan v. Pac. Air Indus.* (1970) 2 Cal.3d 304, 316.)

The Paks argue that even if coverage was terminated when they signed the quitclaim deed, their subsequent agreement with the LLC to rescind the deed means they have maintained an unbroken interest in the Property since its purchase. While the Paks are correct that rescission extinguishes a contract and

restores the parties to their former positions, they carry this principle past its breaking point by effectively contending their agreement to rescind the quitclaim deed reverses all consequences of their original agreement. That is not the case.

Rescission of a contract does not mean every action the parties took during the pendency of the contract is erased from history. (See, e.g., *Long v. Newlin* (1956) 144 Cal.App.2d 509, 512 [rescission of partnership agreement meant, as between the parties, no partnership ever existed but the appellant was not excused from liability to creditors of partnership where he held himself out as member of partnership prior to rescission]; *Joshua Tree Townsite Co. v. Joshua Tree Land Co.* (1950) 100 Cal.App.2d 590, 596 [rescission was not an appropriate remedy where purchaser had conveyed property to third party and thus could not restore seller to pre-contract condition].) The rescission of the quitclaim deed merely restored the status quo ante as between the Paks and their LLC. It does not mean the Paks rewound the passage of time and undid the attendant consequences of their original decision.

As before, the arguments the Paks advance to avoid this conclusion are unpersuasive. The Paks argue the rescission is binding on First American because California law provides the rescission of a contract binds an intended third-party beneficiary, who cannot enforce a contract after it is rescinded. That principle is inapposite here. First American was not an intended third-party beneficiary of the quitclaim deed, and it is not attempting to somehow enforce it. Rather, it is asserting Condition 2 of the Policy was triggered in 2008 by the execution of the quitclaim deed.

The Paks also argue two non-California cases support their broad view of the effect of rescission. Out of state authority is not binding (*Doe v. Occidental College* (2019) 37 Cal.App.5th 1003, 1018, fn. 2)), and the cases upon which the Paks rely are unpersuasive here. The court in *Davis v. Elite Mortg. Servs.* (N.D.Ill. June 1, 2009, No. 06 C 2648) 2009 U.S.Dist.LEXIS 46381, which addressed "the effect of the potential rescission of a series of real estate transactions on the payoff and release of a mortgage and coverage under a related title insurance policy" considered the propriety of rescission as an equitable remedy the court had the discretion to impose, not the legal effect of parties' mutual decision to rescind. (*Id.* at *8.) The other case upon which the Paks rely, *Stevens v. Dakota Title & Escrow Co.* (Ct.App. Oct. 26, 2004, No. A-03-378) 2004 Neb. App. LEXIS 298, held a title insurance policy was not revived where the attempted rescission could not return the parties to the status quo ante. It does not hold a rescission in which the parties were restored to the status quo would, in fact, have revived the policy.

Because the quitclaim deed terminated coverage under Condition 2 of the Policy, and because the subsequent rescission of the quitclaim deed did not erase all effects of that initial termination, we conclude the trial court properly sustained First American's demurrer to the breach of contract cause of action.

C. Other Causes of Action

The demurrers to the Paks' remaining causes of action were also properly sustained. The declaratory relief causes of action sought a declaration First American was obligated to defend and indemnify the Paks against the Gage lawsuit. Because coverage terminated in 2008 and no such obligation

existed when the Paks tendered their claim, the relief the Paks sought could not be granted.

We reach the same result as to the bad faith cause of action. "A claim for breach of the implied covenant of good faith and fair dealing cannot be maintained unless benefits are due under the policy at issue." (*Hovannisian v. First American Title Ins. Co.* (2017) 14 Cal.App.5th 420, 437.) Because coverage under the Policy terminated in 2008, no benefits were due in 2018 and the Paks did not have a viable bad faith cause of action.

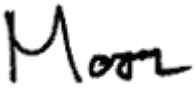
DISPOSITION

The judgment is affirmed. First American shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:



MOOR, J.

KIM, J.