

Financial Interest Exclusion Bars Coverage for Real Estate Agents' Dispute with Joint Venturer

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Applying Florida law, the United States District Court for the Middle District of Florida has held that the "financial interest" exclusion of a Real Estate Errors and Omissions Policy barred coverage for a lawsuit brought by the joint venture partner of the insured agents concerning property purchased for the venture in the partner's name. *O'Rear v. Greenwich Ins. Co.*, 2010 WL 4867527 (M.D. Fla. Nov. 23, 2010).

Two real estate agents formed a joint venture with their client to purchase and "flip" certain real property. The client purchased the property solely in his name and funded the down payment, with the agreement that the agents would make mortgage payments until they were "equally invested." A joint venture or partnership agreement was signed after the purchase. The plan was a failure, and the client sued the agents, who tendered the action to their professional liability insurer. After the insurer denied coverage, the agents assigned their coverage rights to the client, who sued the insurer for breaches of the duty to defend and to indemnify.

The court found that, although the underlying action involved the "performance of real estate services," the policy afforded no coverage for the underlying action because the policy excluded coverage for any claim "based on or arising out of the purchase of property by, . . . 2. any entity in which any Insured had a financial interest or a contemplated financial interest." The client argued that this exclusion was inapplicable because the property was purchased solely in the client's name and the partnership or joint venture agreement was not reduced to writing until after the purchase. The court disagreed, reasoning that the face of the complaint established that the agents had a "contemplated financial interest" in the purchase of the property. The "technicality" of the property being placed in the client's name alone, the court determined, does not render the exclusion inapplicable. Accordingly, the court found no possibility of coverage for the underlying action and no duty to defend or indemnify.