



March 5, 2020

Mr. Scott Dolan  
637 Arnold, LLC  
1005 Trenton Ave, Unit 4  
Point Pleasant Beach, NJ 08742

**VIA EMAIL:** [scott@arnoldhall.info](mailto:scott@arnoldhall.info)

RE: Insured: 637 Arnold, LLC (the "**Insured**")  
Property: 637-639 Arnold Ave., Point Pleasant Beach, NJ (the "**Property**")  
STGC Policy No.: O-9401-465016 (the "**Policy**")  
STGC File No.: S023-0304592-18

Dear Mr. Dolan:

This correspondence is Stewart Title Guaranty Company's (hereinafter "STGC") notification in connection with the above referenced claim concerning the encroachment lawsuit for which STGC provided counsel on your behalf and information concerning the further involvement of STGC on this matter.

Please be advised that the title insurance Policy is a contract of indemnification which provides coverage for certain specified losses and perils, subject to the terms, conditions, exclusions, and exceptions found in the policy.

Based on STGC's investigation, our understanding of the facts of this claim are set forth below.

On December 29, 2015, 637 Arnold LLC (the "Insured") received title to the Property as evidenced by the deed recorded in Ocean County Clerk's Office in Book 16280, Page 1550.

In connection with this transaction, STGC Policy No. O-9401-465016 (the "Policy") was issued to the Insured insuring title to the Property subject to the conditions, exclusions, and exceptions found in the Policy.

On or around September 2018, the Insured was sued in the Superior Court of New Jersey Chancery Equity Division Ocean County Docket No.: C-194-18 by a neighboring property owner, 641 Arnold Ave LLC (the "Plaintiff") alleging that

the Insured's building encroaches onto the Plaintiff's property by half a foot (the "Lawsuit").

STGC retained Counsel, Michael D. Mezzacca (the "Retained Counsel") on your behalf to defend you against the claims alleged in the Lawsuit.

Retained Counsel filed an Answer to the Lawsuit on November 19, 2018 and asserted a defensive counterclaim against the Plaintiff that the Plaintiff's building is encroaching onto the Insureds' Property.

Retained Counsel was retained on behalf of the Insured solely for purposes of defending the encroachment Lawsuit and resolving the title claim.

On or around February 2019 the Insured and the Plaintiff attempted to mediate their disputes concerning the Lawsuit. A tentative settlement was recommended by Retained Counsel but it was ultimately rejected by the Insured. As a result of the Court entered an order requiring the appointment of commissioners.

At the final mediation session on April 10, 2019, when the tentative agreement was rejected, the Court entered an order requiring the appointment of commissioners.

The commissioners were appointed on September 27, 2019.

As Retained Counsel was in the process of scheduling a hearing with the commissioners and providing them the pertinent information including the surveys and title work and a site visit, the Plaintiff was proceeding with plans to redevelop their property.

On or around December 3, 2019, the Plaintiff sold their property to a new owner, EAF ONE, LLC (the "New Plaintiff"). A substitution of parties was sent to the court naming the New Plaintiff as a party to the Lawsuit. A substitution of attorney for the New Plaintiff was also filed.

Counsel for the New Plaintiff has made a settlement proposal verbally and in writing. The New Plaintiff through it's Counsel has agreed to dismiss the Lawsuit with prejudice and agrees to a reciprocal boundary agreement stipulating current owners and any successors forever waive any challenge to each other's respective title/alleged encroachment. These stipulations would be recorded and run with the land.

This proposal would have resolved the title claim and the Lawsuit. The Plaintiff's proposal to dismissal of the Lawsuit ends any challenge to your title concerning the alleged encroachment.



Retained Counsel has recommended the settlement proposal. You do not want to give up the defensive counterclaim against the Plaintiff and your claim that the Plaintiff's building is encroaching on the Insureds' Property. You allege that doing so would preclude you from bringing a suit in the future against the former owner for other claims.

You want to continue to litigate the counterclaim against the Plaintiff.

On January 23, 2020, Retained Counsel filed a motion to be relieved as Counsel as the relationship with the Insured has become profoundly unworkable.

The motion to be relieved was heard on February 14, 2020. You advise that you attended the hearing. A Court Order was entered February 14, 2020, a copy of which I have attached hereto relieving Retained Counsel as Counsel for the Insured.

The Policy generally provides coverage as follows in part:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.

4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(a) the occupancy, use, or enjoyment of the Land;

(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.



9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

We would like to draw your attention to Paragraph Six (a) of the Conditions of the Policy which provides as follows:

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. **If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to**

**defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.**

As stated above in Paragraph 6 (a) of the Policy, the Insured has a duty to cooperate in securing to the Company the right to prosecute the claim, and the Insured shall give the Company all reasonable aid to resolve the claim. Failure of the Insured to provide the requisite cooperation may result in termination of the obligations of the Company under the Policy, including any liability, obligation to defend, prosecute or continue litigation, to the extent the Company is prejudiced by such lack of cooperation.

By failing to cooperate in resolving the title claim, the Insured has not provided reasonable aid or the required cooperation as is required under the provisions of the Policy. The failure to cooperate and provide aid has resulted in the Company's termination of coverage under the Policy, including the withdrawal of defense.

Nothing contained in this letter is a waiver of any rights of STGC, and all such rights are reserved, including the right to deny or limit coverage under the Policy due to any failure of the Insured to cooperate with STGC's efforts to resolve the title claim.

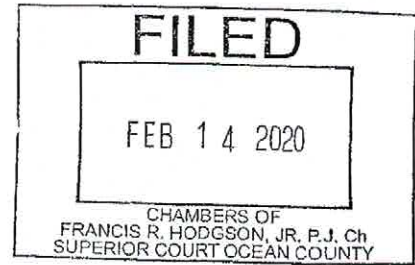
Very truly yours,

**STEWART TITLE GUARANTY COMPANY**

  
Esmeralda Sema  
Claims Counsel

Cc: Susanne Hawkins, Associate Chief Claims Counsel

BOURNE, NOLL & KENYON  
Michael D. Mezzacca, Esq.  
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(908) 277-2200  
Attorneys for Defendant  
637 Arnold LLC



641 ARNOLD AVE LLC,

Plaintiff,

vs.

637 ARNOLD LLC,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION  
: OCEAN COUNTY  
:  
: Docket No. OCN-C-194-18  
:  
: CIVIL ACTION  
:  
: ORDER  
:

THIS MATTER having been opened to the Court by Michael D. Mezzacca, Esq. of Bourne, Noll & Kenyon, counsel for the defendant 637 Arnold LLC, and the Court having read and considered the papers and for good cause shown,

IT IS ON THIS 14 day of Feb, 2020

ORDERED that Michael D. Mezzacca, Esq. and the law firm of Bourne, Noll & Kenyon be and are hereby relieved as counsel for the defendant; and it is further

ORDERED that the defendant shall retain new counsel within 20 days of the date hereof; and it is further

ORDERED a true copy of this Order shall be served upon all counsel of record within 7 days of the date hereof.

  
FRANCIS R. HODGSON, JR. P.J. Ch

FOR THE REASONS  
EXPRESSED ON THE RECORD

2/13/2020

*Unopposed*