

NOTICE  
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2016 IL App (5th) 140227-U

NO. 5-14-0227

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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TERESA STEPHENS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
USF INSURANCE COMPANY, )  
 )  
Defendant-Appellee, )  
 )  
and )  
 )  
USF INSURANCE COMPANY, )  
 )  
Counterplaintiff, )  
 )  
v. )  
 )  
TERESA STEPHENS, CARROLLE KIBBY, )  
Individually and as Special Administrator of )  
the Estate of Douglas Kibby, Deceased, )  
 )  
Counterdefendants, )  
 )  
and )  
 )  
THE SURINDER KUMAR TRUST, )  
 )  
Counterdefendant-Appellant, )  
 )  
and )  
 )

USF INSURANCE COMPANY,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
PREMIUM FINANCING SPECIALISTS,	)	
INC.,	)	
	)	
Third-Party Defendant,	)	
	)	
and	)	
	)	
PREMIUM FINANCING SPECIALISTS,	)	
INC.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
D.R. SPARKS INSURANCE SERVICES,	)	Honorable
	)	Dennis R. Ruth,
Third-Party Defendant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Chapman and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Certified question answered in the affirmative.

¶ 2 This appeal is taken from the trial court's order granting summary judgment in favor of USF Insurance Company (USF) and Premium Financing Specialists, Inc. (Premium Financing), and against plaintiff, Teresa Stephens (Stephens), and counterdefendants, Carrolle Kibby, individually and as special administrator of the estate of Douglas Kibby, deceased (Kibby), and the Surinder Kumar Trust (Kumar). The trial court found that USF effectively cancelled Stephens' insurance policy prior to the date of

a fire that occurred on Stephens' property, despite the fact it was made at the request of Premium Financing's invalid power of attorney. We answer the certified question in the affirmative.

¶ 3

### BACKGROUND

¶ 4 This appeal concerns USF's purported cancellation of Stephens' financed insurance policy made at the request of Premium Financing through an invalid power of attorney.

¶ 5 On February 3, 2004, Stephens procured an insurance policy on a building she owned which covered commercial property damage or loss of the covered property and commercial general liability. The policy was issued by USF and was agreed to run from February 2004 through February 2005. Stephens financed the policy through a premium finance agreement with Premium Financing. The agreement also purportedly vested Premium Financing with a power of attorney granting it authority to request cancellation of the policy if Stephens failed to make the requisite premium payments.

¶ 6 On July 8, 2004, Stephens failed to make the required premium payments due in accordance with the financing agreement, after which Premium Financing sent a notice of intent to cancel Stephens' policy to Stephens and USF providing that Premium Financing would request cancellation of the policy if Stephens failed to make her payments. On August 2, 2004, Premium Financing advised USF to cancel Stephens' policy effective August 5, 2004, due to Stephens' failure to make payments in accordance with the financing agreement. USF complied with Premium Financing's request and cancelled Stephens' insurance policy effective August 5, 2004.

¶ 7 On August 17, 2004, Stephens' property was damaged by a fire which resulted in the death of Kibby, who was a tenant on Stephens' property. The fire also damaged an adjacent property owned by Kumar. On August 18, 2004, Stephens submitted a fire claim to USF pursuant to the commercial property coverage portion of her insurance policy. Approximately two weeks later, USF denied coverage asserting the policy had been effectively cancelled prior to the fire.

¶ 8 On November 30, 2004, Stephens filed a declaratory action against USF seeking coverage for the property damage that occurred as a result of the fire. In response, USF filed a counterclaim for declaratory judgment seeking a judicial determination that the policy provided no coverage for Stephens because it had been cancelled prior to the date of the fire.

¶ 9 On December 15, 2004, Kibby filed a separate lawsuit against Stephens for damages resulting from the fire. Stephens tendered the defense of Kibby's lawsuit to USF pursuant to the commercial liability coverage portion of her insurance policy. In response on June 22, 2005, USF filed a first amended counterclaim adding Kibby as an interested party to the declaratory action against Stephens, seeking a judicial determination that USF did not owe a duty to defend or indemnify Stephens for damages alleged by Kibby because Stephens' policy had been effectively cancelled prior to the fire.

¶ 10 On March 29, 2005, Kumar also filed a separate lawsuit against Stephens seeking recovery for damages resulting from the fire. Stephens again tendered the defense of Kumar's lawsuit to USF. On July 12, 2006, USF filed a second amended counterclaim

for declaratory judgment adding Kumar as an additional interested party to the declaratory action against Stephens, seeking a judicial determination that it did not owe a duty to defend or indemnify Stephens for the damages alleged in the Kumar complaint because the policy had been cancelled prior to the fire. USF also alleged Stephens' notice was late, as Stephens tendered the defense of Kumar's complaint to USF six months after service of the complaint.

¶ 11 On March 2, 2007, USF filed a motion for summary judgment asserting the undisputed facts indicated no coverage was available to Stephens under her insurance policy because, upon notice to Stephens and USF, Premium Financing, acting as Stephens' attorney-in-fact, cancelled the policy for Stephens' nonpayment of the premium prior to the date of the fire. Also on March 2, 2007, Premium Financing filed a motion to join USF's motion for summary judgment. On March 30, 2007, Kumar filed a response to USF's motion for summary judgment. On April 13, 2007, USF filed a reply to Kumar's response. Also on April 13, 2007, Premium Financing filed a motion to join USF's reply to Kumar's response.

¶ 12 On December 2, 2008, Kumar filed a cross-motion for summary judgment on count III of USF's second amended counterclaim for declaratory judgment. Kumar argued USF had a duty to defend and indemnify Stephens in the underlying lawsuit filed by Kumar because the alleged cancellation of the insurance policy before the fire loss was invalid, as the premium finance agreement lacked a date as required by section 513a9(a) under the Premium Financing Act (Act) of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/513a9(a) (West 2008)). On January 16, 2009, USF and

Premium Financing filed responses to Kumar's motion. Kumar then filed its reply brief, and on March 6, 2009, Kibby joined Kumar's motion for summary judgment.

¶ 13 On May 6, 2011, the parties appeared before the trial court regarding the cross-motions for summary judgment. The court entered an order continuing the matter so the parties could verify that all relevant case law and filings were considered before the court made a ruling. On June 30, 2011, USF filed a supplemental brief in support of its motion for summary judgment.

¶ 14 On May 28, 2013, the court entered an order granting summary judgment in favor of USF and Premium Financing and against Stephens, Kumar, and Kibby. While the court indicated Premium Financing lacked a valid power of attorney to request cancellation of the policy because the premium financing agreement was not dated and was, therefore, noncompliant with section 513a9(a) of the Act, it still found USF validly cancelled Stephens' insurance policy prior to the fire. The court ordered that Stephens' insurance policy was not in effect on the date of the fire, USF had no duty to indemnify Stephens for damages resulting from the fire, and USF had no duty to defend or indemnify Stephens in the lawsuits filed by Kumar and Kibby. The court based its ruling on *Selective Insurance Co. v. Urbina*, 371 Ill. App. 3d 27, 861 N.E.2d 1145 (2007).

¶ 15 Kumar then filed a motion pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010) seeking leave to file an application for immediate appeal from the trial court's May 28, 2013, order, which the court granted. On May 19, 2014, Kumar filed its application for leave to appeal, which this court granted. This matter, which has been joined by Kibby, is now before this court on a certified issue for appellate review.

¶ 16

## ANALYSIS

¶ 17 The issue on appeal concerns whether USF's cancellation of Stephens' policy was effective prior to the date of the fire, despite the fact it was made at the request of Premium Financing's invalid power of attorney. Kumar and Kibby allege the trial court erred in granting summary judgment in favor of USF and Premium Financing and against Stephens, Kumar, and Kibby after finding Stephens' policy was cancelled prior to the date of the fire. Pursuant to Supreme Court Rule 308, the following question has been certified.

"Does an insurer have the right to cancel an insurance policy at the direction of a premium finance company where the contract between the premium finance company and the named insured that purportedly gave the premium finance company the power of attorney to request cancellation of the policy was undated and, therefore, did not comply with the Illinois Premium Finance Act's requirement that the premium finance agreement be dated[?]"

¶ 18 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). A trial court's rulings on motions for summary judgment are reviewed *de novo*. *La Salle Bank, N.I. v. First American Bank*, 316 Ill. App. 3d 515, 521, 736 N.E.2d 619, 624 (2000).

¶ 19 Kumar and Kibby argue USF did not have the right to cancel Stephens' insurance policy at the request of Premium Financing because the contract between Stephens and

Premium Financing, which granted Premium Financing the power of attorney to request cancellation of the policy, was undated and, therefore, in violation of the Act. Kumar and Kibby contend this noncompliance negates USF's cancellation of Stephens' policy and, as a result, Stephens' policy was in effect on the date of the fire.

¶ 20 Premium finance companies are regulated by section 513a1 of the Insurance Code. 215 ILCS 5/513a1 (West 2012). A premium finance company is defined under the Code as "any person engaged in the business of financing insurance premiums, of entering into premium finance agreements with insureds, or of acquiring premium finance agreements." 215 ILCS 5/513a2(d) (West 2012). In the case at bar, Premium Financing falls under this definition and is, therefore, subject to the regulations of this particular section of the Insurance Code.

¶ 21 Pursuant to section 513a9(a) of the Act, "[a] premium finance agreement must be dated and signed by or on behalf of the named insured." 215 ILCS 5/513a9(a) (West 2012). Further, section 513a11(a) provides that a premium finance company may request cancellation of an insurance policy upon default by the insured "[w]hen a premium finance agreement contains a power of attorney enabling the premium finance company to cancel" the insurance contract, but such cancellation may not be made by a premium finance company "unless the request for cancellation is effectuated under this Section." 215 ILCS 5/513a11(a) (West 2012).

¶ 22 Here, the parties do not dispute that the premium financing agreement between Stephens and Premium Financing on which USF relied concerning its cancellation of Stephens' policy lacked a date as required under the Act and, therefore, was not effective



in granting Premium Financing authority to act as Stephens' attorney-in-fact when it requested that USF cancel the policy. The trial court nevertheless found USF effectively cancelled Stephens' policy prior to the date of the fire, despite the fact that USF's cancellation was made at the request of Premium Financing's invalid power of attorney. For the following reasons, we agree with the trial court.

¶ 23 The trial court based its findings on the First District's ruling in *Selective Insurance Co. v. Urbina*, 371 Ill. App. 3d 27, 861 N.E.2d 1145 (2007). In *Selective Insurance*, Jorge and Antonio Urbina entered into a premium financing agreement with Lincoln Acceptance Company (Lincoln), in which the Urbinas contracted to make premium payments to Lincoln for an automobile policy issued by Universal Casualty Company (Universal). The agreement granted Lincoln a power of attorney to request cancellation of the policy if the Urbinas failed to make premium payments.

¶ 24 The agreement was not signed by the Urbinas or Lincoln's authorized agent as is required by section 513a9(a) of the Act (215 ILCS 5/513a9(a) (West 2012)). After the insurance policy was issued, the Urbinas failed to make the required premium payments. Lincoln then contacted Universal requesting cancellation of the policy, and Universal complied with Lincoln's request.

¶ 25 Jorge Urbina was subsequently involved in an automobile accident with an insured of Selective Insurance Company (Selective). Selective filed a negligence action seeking damages arising out of the accident, and obtained a judgment against the Urbinas. Urbinas' insurer, Universal, declined coverage when Selective sought to enforce the

judgment, claiming the policy had been cancelled prior to the accident for the Urbinas' nonpayment of premiums in accordance with the premium financing agreement.

¶ 26 In response, Selective argued Lincoln had no authority to request cancellation of the policy because the agreement lacked the signature required by section 513a9(a) of the Act. Selective argued that since Lincoln was acting in the absence of Urbina's power of attorney when it requested cancellation of the policy, it was in violation of section 513a11 of the Act and, therefore, the policy was not effectively cancelled by Universal but remained in effect on the date of the accident.

¶ 27 On appeal, the First District rejected Selective's argument, finding Universal effectively cancelled the Urbinas' insurance policy prior to the automobile accident, despite the fact it was made at the request of Lincoln's invalid power of attorney. Specifically, the court noted:

"Since the premium finance contract contained in the record does not contain Urbina's signature at the bottom, we shall assume for purposes of this appeal that Lincoln did not have the power of attorney to cancel the insurance policy. However, once Universal received the cancellation request, it was within its right to honor the request and act accordingly. The Code did not require Universal to independently verify whether Lincoln had fulfilled its statutory obligations by having in its possession a valid power of attorney. Lincoln's violation of the Code did not operate to negate the effectiveness of Universal's cancellation. To reiterate the principle stated repeatedly throughout the preceding cases we have discussed, section 513a11 addresses itself solely to premium finance companies and imposes

no obligations or sanctions on insurance companies that act in accordance with cancellation requests." *Selective Insurance Co.*, 371 Ill. App. 3d at 35, 861 N.E.2d at 1151-52.

¶ 28 In the instant case, Stephens entered into a premium finance agreement with Premium Financing, in which Stephens agreed to make premium installment payments to Premium Financing for an insurance policy issued by USF to Stephens. Similar to *Selective Insurance*, the premium finance agreement provided Premium Financing with a power of attorney to request cancellation of the policy if Stephens failed to make the premium installment payments.

¶ 29 As in *Selective Insurance*, Stephens failed to make her premium payments, after which Premium Financing requested that USF cancel the policy. After USF cancelled the policy, a fire occurred which caused the death of Kibby and damaged Stephens' property as well as Kumar's adjacent property. Coverage was sought pursuant to Stephens' USF policy, but declined by USF which asserted the policy was cancelled prior to the fire for Stephens' nonpayment of premiums.

¶ 30 After careful review of the record, we find the same issue being raised in this appeal has already been decided by the First District in *Selective Insurance*, namely whether a premium finance company's undisputed violation of section 513a9(a) and section 513a11(a) of the Act negates an insurance company's cancellation of an insurance policy when made at the request of the finance company. *Selective Insurance* indicates USF's cancellation of Stephens' policy was effective despite the fact it was made at the request of Premium Financing's invalid power of attorney, as USF had no duty under the

Insurance Code to independently verify whether Premium Financing had fulfilled its statutory obligations by having in its possession a valid power of attorney. We agree with *Selective Insurance*.

¶ 31 For the reasons stated above, we answer the certified question in the affirmative. Accordingly, we remand for further proceedings.

¶ 32 Certified question answered in affirmative; remanded for further proceedings.