

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 14, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP1599**

**Cir. Ct. No. 2009CV408**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**WILLIAM C. HASELOW AND SANDRA A. HASELOW,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**VILAS TITLE SERVICE, INC., PROASSURANCE SPECIALTY  
INSURANCE CO., INC., ABC INSURANCE COMPANY AND XYZ  
INSURANCE COMPANY,**

**DEFENDANTS,**

**CHICAGO TITLE INSURANCE COMPANY,**

**DEFENDANT-THIRD-PARTY  
PLAINTIFF-RESPONDENT,**

**v.**

**RICK ERNST,**

**THIRD-PARTY DEFENDANT.**

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APPEAL from a judgment of the circuit court for Vilas County:  
NEAL A. NIELSEN, III, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. William and Sandra Haselow appeal a summary judgment dismissing their claims against Chicago Title Insurance Company. The circuit court determined the Haselows could not prove the elements of apparent authority. We conclude the Haselows could not satisfy the second element of apparent authority, that Chicago Title had knowledge of its purported agent's representations. Accordingly, we affirm.

### **BACKGROUND**

¶2 The Haselows hired Integrity Log & Country Homes, LLC to construct a vacation home in Lac du Flambeau. The Haselows entered into a \$710,000 construction loan agreement with WaterStone Bank. As part of the agreement, an escrow disbursement agent would incrementally release funds to Integrity Log as construction progressed. Integrity Log requested Vilas Title Service, Inc. as the disbursement agent, and the Haselows conveyed the request to WaterStone.

¶3 WaterStone initially informed the Haselows that Vilas Title was not on its approved list of escrow agents, but WaterStone ultimately approved the request. Only the Haselows and two WaterStone employees attended the loan closing. No one from Vilas Title attended the closing in Wauwatosa, because it was too far to travel from Eagle River. Bank employee Raeleen Johnson told the

Haselows that, at Vilas Title's request, she was attending the closing as Vilas Title's representative.<sup>1</sup>

¶4 Sandra explained as follows in her deposition:

At the closing, [Johnson] described to us the process of draws and the responsibilities of Vilas Title. And she provided to us, as part of the packet that Vilas Title had given her, ... [a Vilas Title employee's] business card.

....

And at the bottom of that business card, it said, "Chicago Title." And my husband noticed that right off the bat and a conversation ensued regarding, about Chicago Title being a large company. We didn't know anything about Vilas Title, but he felt comfortable that they were a subsidiary company, or under the umbrella, I don't know the terminology, of a large reputable company such as Chicago Title.

....

[As] part of this discussion with Bill about Chicago Title[,] I believe they told us that Chicago Title was on their approved list of title companies.

....

We discussed what was on the card, that they were a subsidiary. I don't recall the exact words. But it was our understanding from this business card and the discussions regarding it, that Vilas Title was a subsidiary company.

....

And it was right here on the business card that they were part of Chicago Title. There wasn't anything to conclude. It was right there on paper.

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<sup>1</sup> Johnson stated she did not recall anything from the closing. However, we set forth any disputed facts in the light most favorable to the Haselows, pursuant to the summary judgment standard. See *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 567, 278 N.W.2d 857 (1979).

The Vilas Title business card included a Chicago Title logo,<sup>2</sup> and at the bottom of the card there were two lines of text. The first line stated, “Providing title insurance and complete closing services[.]” The second line stated, “Agents for Chicago Title Insurance Co.” Additionally, the card identified the employee as a “*Closing Agent*[.]”

¶5 Sandra also testified that she and her husband observed one or two other forms during closing that referenced Chicago Title. She specifically identified a construction draw request form, which included a Chicago Title logo in the header and stated, “Issuing Agent of CHICAGO TITLE INSURANCE COMPANY” in the footer.

¶6 The escrow disbursing agreement named Vilas Title immediately below the document’s title. The introductory paragraph then identified Vilas Title as the “Escrowee.” Each of the Haselows signed the document, and Johnson signed it on behalf of “Lender” as its “Loan Officer.” No one signed the line designated for “Escrowee.” The agreement, which consisted of two full pages plus a signature page, contained no reference to Chicago Title.

¶7 The escrow disbursing agreement required Vilas Title to conduct an inspection “certifying that work has been completed and materials are in place as indicated” each time Integrity Log requested a disbursement during the course of construction. Vilas Title did not conduct any inspections, but it did take photographs. In July 2008, Integrity Log informed the Haselows it had run out of

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<sup>2</sup> The Chicago Title logo does not include any letters or words.

money and could not complete construction without additional funds. The Haselows spent over \$200,000 more to complete construction.

¶8 The Haselows were awarded approximately \$42,000 from Integrity Log following arbitration, which they were unable to collect.<sup>3</sup> In October 2009, the Haselows commenced this action against Vilas Title, alleging breach of the escrow disbursing agreement. The Haselows claimed Vilas Title failed to detect deficiencies in Integrity Log's work, including failure to complete construction in accordance with the specifications. In March 2013, after retaining new counsel, the Haselows joined Chicago Title as a defendant. As relevant to this appeal, the Haselows' claims against Chicago Title relied on the theory of Vilas Title's apparent authority as Chicago Title's agent.

¶9 It is undisputed that Vilas Title did not have actual authority to act as a construction loan escrow disbursing agent on Chicago Title's behalf. Rather, Vilas Title was authorized to act as agent for Chicago Title only for the purpose of issuing title insurance commitments and policies. It is also undisputed that Vilas Title never told the Haselows or WaterStone that Vilas Title was an agent of Chicago Title for construction loan escrow disbursement services. The Haselows had no direct contact or communication with Vilas Title prior to closing, and only made contact after Integrity Log indicated it was unable to complete construction. Chicago Title's underwriting counsel averred that, to her knowledge, "Chicago Title had no notice or knowledge of any construction loan disbursing arrangement involving the Haselows until Chicago Title was sued ... in March 2013."

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<sup>3</sup> The construction contract between the Haselows and Integrity Log contained an arbitration clause, which Integrity Log invoked. Neither Vilas Title nor Chicago Title was party to the arbitration.

¶10 Chicago Title moved for summary judgment, arguing the Haselows could not prove the elements of apparent authority. The circuit court agreed and dismissed the claims against Chicago Title. The Haselows appeal.

## DISCUSSION

¶11 The Haselows argue the circuit court improperly granted summary judgment to Chicago Title on the issue of apparent authority. Summary judgment is appropriate when “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2). When determining whether there are genuine factual issues, the facts must be viewed in the light most favorable to the nonmoving party. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis.2d 555, 567, 278 N.W.2d 857 (1979). We review grants of summary judgment de novo. *Donaldson v. Urban Land Interests, Inc.*, 211 Wis. 2d 224, 229-30, 564 N.W.2d 728 (1997).

¶12 To establish apparent authority, the Haselows must show: (1) acts by the agent or principal justifying belief in the agency; (2) knowledge by the party sought to be held; and (3) reliance consistent with ordinary care. See *Larkin v. Johnson*, 67 Wis. 2d 451, 457, 227 N.W.2d 90 (1975); WIS JI—CIVIL 4005 (1994).

¶13 We address only the second prong: whether Chicago Title knew of the acts by Vilas Title that gave rise to the Haselows’ belief that Vilas Title was an agent of Chicago Title with respect to the construction loan escrow disbursing agreement. We conclude the Haselows’ proof on this element is inadequate as a matter of law.

¶14 There is no evidence that Vilas Title ever told anyone, anywhere, at any time that it was an agent of Chicago Title for purposes of construction loan escrow disbursement services. Thus, in the first instance, there is no suggestion that Chicago Title could have discovered that Vilas Title was making such claims overtly.

¶15 There is also no evidence that anyone at Vilas Title, much less at Chicago Title, was aware of the discussion at the loan closing between the Haselows and the WaterStone employees whereby the Haselows concluded Vilas Title would be acting as an agent for Chicago Title with respect to the construction loan disbursing agreement.

¶16 Rather, the Haselows argue Chicago Title knew Vilas Title was purporting to be its agent for all purposes based on the stationery the Haselows observed just prior to signing the construction loan escrow disbursing agreement. We conclude Chicago Title could not have gained such knowledge from merely reviewing the stationery—with respect to the Haselows specifically, or any Vilas Title construction loan escrow disbursement clients generally.

¶17 To begin with, Vilas Title's construction loan escrow disbursing agreement form itself contained no reference to Chicago Title and no Chicago Title logo. The blank form draw request that the Haselows observed was printed on a Vilas Title letterhead that did contain a Chicago Title logo in the header and, in the footer, stated, "Issuing agent of CHICAGO TITLE INSURANCE COMPANY." However, that document would not have alerted Chicago Title that Vilas Title was holding itself out as Chicago Title's construction loan escrow disbursement agent. The document accurately stated Vilas Title was an issuing

agent of Chicago Title. Title commitments and insurance policies are “issued;” construction loan escrow disbursement agreements are not.

¶18 The business card the Haselows viewed at their loan closing similarly would not have alerted Chicago Title that Vilas Title was claiming to be its agent for construction loan escrow disbursement services. Although the card uses the broad term, “Agents” for Chicago Title, that statement immediately followed the statement, “Providing title insurance and complete closing services[.]” The card does not mention postclosing services such as construction loan escrow disbursement.

¶19 Moreover, even if Chicago Title could have concluded from reviewing the draw request form and business card that Vilas Title was purporting to be Chicago Title’s agent for construction loan escrow disbursement services—despite the obvious lack of any reference to Chicago Title in the escrow agreement—there is no evidence that Chicago Title knew those documents were being presented to the Haselows. For that matter, there is no evidence that Chicago Title even knew that Vilas Title and the Haselows were entering into a construction loan escrow disbursing agreement.

¶20 In light of the foregoing, the Haselows could not prove the second element of apparent authority, that Chicago Title knew of the acts giving rise to their belief that Vilas Title was Chicago Title’s agent for purposes of the construction loan escrow disbursing agreement. *See Larkin*, 67 Wis. 2d at 457. Accordingly, Chicago Title was entitled to summary judgment on the issue of apparent authority.



*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5.

