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Insurer Says Title Fee Suit Belongs In Federal Court

By **Sarah Jarvis**

Law360 (December 12, 2019, 10:01 PM EST) -- First American Title Insurance Co. on Thursday asked to remove to federal court a proposed class action accusing it of improperly charging real estate buyers closing fees, saying the Middle District of Florida has jurisdiction under the Class Action Fairness Act.

The insurer said it denies the allegations made by Antao Properties LLC, which consists only of Florida resident Edward Antao, and denies that the proposed class of buyers could be certified or that any of them are entitled to relief.

But First American said the pleadings and submitted evidence show that the CAFA jurisdictional requirements of party diversity, a proposed class of more than 100 members and an amount in controversy of more than \$5 million are "easily satisfied."

First American noted that it served as a closing agent in connection with more than 19,000 cash purchase transactions in which a buyer may be a class member, and that the potential damages claimed would "far exceed" \$5 million if the buyers' allegations have merit, because they were charged more than \$7 million in closing fees for those transactions during the class period.

Antao filed a proposed class action in state court last month alleging First American improperly charged and collected closing fees from real estate buyers across Florida.

Antao said First American improperly charged him a \$150 closing fee as part of a real estate purchase in November 2017, despite the sale contract for that purchase specifying that the seller would be the one who paid for the "owner's policy and charges." Antao said this includes the closing services fee that he was improperly charged.

"The contract provided that the closing services fee would only be charged to, and collected from, the seller," Antao said in the complaint. "Because the sale was a cash transaction, there was no lender's policy, endorsement or related loan closing services required to be paid by plaintiff, the buyer."

Antao seeks to represent a proposed class of Florida buyers in cash real estate sale transactions — who used a certain contract form approved by the Florida Bar and Florida Association of Realtors, opted for the seller to pay for the owner's policy and charges, but were charged and paid a closing services fee anyway — for the past four years. The size of the class is likely in the thousands, according to Antao's complaint.

Antao said First American knew or should have known that it was only permitted to charge the seller for the closing fee. His complaint includes counts of gross negligence, negligence, breach of fiduciary duty and unjust enrichment.

Antao and the proposed class are seeking a declaration that First American's practice violates buyers' rights, an injunction prohibiting the insurer from collecting closing service fees from buyers in similar transactions, restitution, disgorgement, damages, attorney fees and pre- and post-judgment interest on any money awarded, according to the complaint.

Counsel for First American was not immediately available to comment Thursday, and counsel for Antao declined to comment.

Antao is represented by Joshua H. Eggnatz of Eggnatz Pascucci PA, Richard B. Feinberg of Florida Legacy Law LLC, and Seth M. Lehrman of Edwards Pottinger LLC.

First American is represented by Jacqueline R. A. Root of Pennington PA, and Elizabeth T. Ferrick and Grant Ankrom of Dentons.

The case is Antao Properties LLC v. First American Title Insurance Co., case number 8:19-cv-03058, in the U.S. District Court for the Middle District of Florida.

--Editing by Breda Lund.

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