



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**FIRST AMERICAN TITLE INSURANCE COMPANY v. JOHNSON BANK  
CV-15-0244-PR**

**PARTIES:**

*Petitioner:* First American Title Insurance Company (“First American”)

*Respondent:* Johnson Bank

**FACTS:**

In 2005 and 2006, First American issued two title insurance policies to Johnson Bank. The policies insured Johnson Bank’s interest, as a lender, in two properties that secured loans Johnson made to the properties’ owners for use in purchasing and developing the property. The title insurance policies failed to list certain covenants, conditions and restrictions (“CC&R’s”) that prohibited commercial development on both properties. The property owners defaulted on their loans to Johnson Bank, allegedly because they had intended to develop the property and were prevented from doing so by the CC&R’s. In 2010, the properties were sold at a foreclosure sale for a minor fraction of the amount of the loans. In 2011, Johnson Bank provided First American with notice of title claims under its lenders’ title insurance policies, asserting the CC&R’s prevented both properties from being developed for commercial purposes, and that these CC&R’s were not listed exceptions to the title insurance policies.

The parties agreed to arbitrate the damages claims, but could not agree on the comparative starting date for calculating the alleged diminution in value of the subject parcels. Johnson Bank argued that the date of the loans should be used to calculate damages. First American argued that damages should be calculated based on the value of the properties at the time of foreclosure. The parties filed a declaratory judgment action to have this issue decided, and filed cross-motions for summary judgment. After oral argument, the superior court determined the date of comparative valuation for diminution of value of the two parcels was the date of foreclosure. Johnson Bank appealed, and the court of appeals reversed the superior court’s ruling. The court of appeals held that, because First American failed to discover and timely disclose the CC&R’s, the policy was breached at the time the loan was made, and the date of the loan should be used to measure any diminution in value of the property.

**ISSUES:** “Whether the Court of Appeals erred by holding that the proper date to measure loss under a lender’s title insurance policy is the date of the issuance of the loan.”

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