

Real Property, Financial Services, & Title Insurance Update: Weeks Ending October 6 & 13, 2017

October 17, 2017

REAL PROPERTY UPDATE

- **Ad Valorem Taxes:** land lease holders are considered equitable owners of land for tax purposes if land lease renews automatically and is perpetual; owners of condominium built on land leased from government for 99 years, with option to renew on terms to be renegotiated at the time, were not equitable owners of land and could not be liable for taxes accrued thereon - [Beach Club Towers Homeowners Assoc., Inc. v. Jones](#), Case No. 1D15-5886 (Fla. 1st DCA October 11, 2017) (reversed and remanded)
- **Deficiency Judgment/Attorneys' Fees:** deficiency judgment cannot include attorneys' fees awarded without evidentiary support - [B and H Miracle, LLC, et al. v Wells Fargo Bank, N.A.](#), Case No. 1D16-3549 (Fla. 1st DCA October 11, 2017) (reversed and remanded)
- **Foreclosure:** evidence of possession of note endorsed in blank is all that is necessary to establish standing to foreclose - [GMAC Mortgage, LLC v. Pisano](#), Case No. 4D15-2843 (Fla. 4th DCA October 11, 2017) (reserved and remanded)
- **Trespass:** Seller of real property could not sustain claim for trespass against purchaser because purchaser became equitable owner of real property upon entering into purchase and sale contract - [Gunning v. Equestleader.Com, Inc.](#), Case No. 2D16-2214 (Fla. 2d DCA October 13, 2017)
- **Unlawful Detainer/Service:** service of complaint for unlawful detainer may be accomplished by posting on property, but such service insufficient to confer jurisdiction for other counts pled - [Wincor v. Potash](#), Case No. 4D16-4351 (Fla. 4th DCA October 11, 2017) (affirmed, in part, reversed, in part)

- **Foreclosure:** involuntary dismissal of foreclosure reversed where trial court misapprehended mortgage servicing agent's need to prove authorization to prosecute foreclosure action on behalf of lender; servicing agent was not "prosecuting the case" on lender's behalf when it verified lender's foreclosure complaint or when its employee testified as a witness at a foreclosure trial; lender was and always had been the plaintiff and it was not improper for servicing agent to verify complaint or testify on its behalf at trial - [Wells Fargo Delaware Trust Company N.A. v. Petrov et. al.](#), No. 2D16-1536 (Fla. 2d DCA Oct. 6, 2017) (reversed and remanded)
- **Quiet Title/Summary Judgment:** factual issue as to whether decedent was mentally competent at time of execution of deed should have precluded trial court from entering final summary judgment - [Petithomme v. Petithomme et. al.](#), No. 3D16-2457 (Fla. 3d DCA Oct. 4, 2017) (reversed and remanded)

FINANCIAL SERVICES UPDATE

- **FDCPA:** borrower failed to adequately allege that loan servicer was a debt collector for purposes of FDCPA or to otherwise state a claim under FDCPA for allegedly flawed notice of foreclosure sale - [Kurtzman v. Nationstar Mortg. LLC](#), Case No. 16-17236 (11th Cir. Oct. 10, 2017) (affirming dismissal of borrower's claims against loan servicer).
- **FDCPA/TILA:** debtor's claims under FDCPA and TILA arising from prior bankruptcy case were barred by *res judicata* - [Russell v. Redstone Fed. Credit Union](#), Case No. 16-15117 (11th Cir. Oct. 3, 2017) (affirming dismissal of claims based on *res judicata*)

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