

Real Property & Title Insurance Update: Week Ending June 2, 2017

June 07, 2017

Real Property Update

- **Lease:** where lessee transfers leasehold interest to third party, but retains easement in leased property, lessee transfers less than “entire interest” in property, and such sublease not tantamount to an assignment - [City of Pensacola v. Seville Harbour, Inc.](#), Case No. 1D16-2481 (Fla. 1st DCA June 1, 2017) (affirmed).
- **Ad Valorem Taxes:** property appraiser allowed to make mathematical corrections to previous taxed year assessed values so long as homeowners given notice and opportunity to be heard in front of value adjustment board, pursuant to Taxpayer Bill of Rights - [Nikolits-v-Haney](#), Case No. 4D15-4464 (Fla. 4th DCA May 31, 2017) (reversed and remanded).
- **Foreclosure:** involuntary dismissal against foreclosing bank improper where bank introduced payoff screenshot into evidence showing “all the amounts due and owing, including the principal balance . . . the escrow advance, accrued interest, per diem interest, and [the default date];” when considered in light most favorable to bank, admitted evidence established prima facie case on damages - [Wells Fargo Bank, N.A. v. Eisenberg](#), Case No. 4D16-2646 (Fla. 4th DCA May 31, 2017) (reversed and remanded).
- **Foreclosure:** “[w]ithout evidence showing that a modified credit agreement exists [between a foreclosing bank and a borrower, a] modified mortgage is insufficient to establish the increased amount [the foreclosing bank] claims it is owed” - [Chuchian v. Situs Investments, LLC](#), Case No. 5D15-2125 (Fla. 5th DCA June 2, 2017) (reversed and remanded).

Title Insurance Update

- **Attorney's Fees/American Rule:** in Maryland exception to American Rule permits award of fees from collateral litigation, and court may award damages and fees from plaintiff's separate litigation against a third party caused by defendant's negligent title search, where wrongful conduct of defendant forced plaintiff into litigation with third party, and plaintiff demonstrated that defendant's negligence proximately caused plaintiff to file the collateral action incurring costs and necessary expenses in good faith and did not otherwise receive compensation for those costs and expenses – [Eastern Shore Title Co. v. Ochse](#), Case No. 20-C-10-007315 (Md. Dist. Ct. App. May 31, 2017) (affirming trial court)
- **Compensatory Damages:** insurer permitted an award of compensatory damages from title agent, in an action brought in negligence rather than indemnity, where the award reflects insurer's full amount of settlement with insureds and insurer was legally liable to insureds as a result of agent breaching its duty to insureds – [Chicago Title Ins. Co. v. Accurate Title Searches, Inc.](#), AC 37869 (Conn. Dist. Ct. App. May 30, 2017) (affirming trial court's award of compensatory damages via summary judgment)
- **Compensatory Damages/American Rule:** American Rule does not preclude insurer from receiving an award of compensatory damages from title agent for its attorney's fees and expenses incurred in defending its insured in prior litigation as a result of agent's negligence – [Chicago Title Ins. Co. v. Accurate Title Searches, Inc.](#), AC 37869 (Conn. Dist. Ct. App. May 30, 2017) (affirming trial court's award of compensatory damages via summary judgment)
- **Embezzlement/Evidence of Wrongdoing:** underwriter's correspondence with former title agent convicted of embezzlement that provided a timeline of agent's wrongdoing, detailed allegations of misappropriation, and expressed doubts about defendant's veracity and credibility, was permissible and relevant Rule 403 evidence, where its probative value outweighed its prejudicial effect and there was additional, abundant inculpatory evidence of agent's wrongdoing – [State v. McDonald](#), Case No. K2/11-798A (R.I. Apr. 20, 2017) (affirming conviction of embezzlement and conspiracy)

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