

Real Property, Financial Services, & Title Insurance Update: Week Ending March 11, 2022

March 12, 2022

Real Property Update

- **Reciprocal Easement:** Three operative paragraphs of reciprocal parking easement, and the easement as a whole, unambiguously provided that rights and benefits described were appurtenant and for the benefit of successors to the owners of parcels of land in planned development project that entered into easement, which include SHM – [SHM Cape Harbour, LLC v. Realmark META, LLC](#), No. 2D20-1590 (Fla. 2d DCA Mar. 9, 2022)
- **Foreclosure / Deficiency / Notice:** Entry of deficiency judgment against wife was improper because bank's complaint and summary judgment motion sought entry of damages and deficiency judgments against husband only – [Schneider v. First Am. Bank](#), No. 4D21-571 (Fla. 4th DCA Mar. 9, 2022) (reversed and remanded)

Financial Services Update

- No cases of interest to report.

Title Insurance Update

- **Section 48.23 / Lis Pendens:** Despite the fact that the insured lender had actual knowledge of claims before taking a mortgage, the insured took its mortgage lien “exempt” from the claims of plaintiff and from any judgment in the case, as if it had “no actual or constructive notice of the proceeding or the claims made therein or the documents forming the causes of action against the property in the proceeding,” pursuant to Florida’s lis pendens statute, section 48.23, because the insured took its mortgage after plaintiff had allowed its lis pendens to be discharged – [Weiss v. Towers of Blue Lagoon 1 Inc.](#), No. 2014-030864-CA-01 (Fla. 11th Cir. Ct. Mar. 14, 2022) (granting summary judgment in lender’s favor)
- **Motion for Sanctions:** Title company’s motion for sanctions against defendant for failing to timely respond to title company’s discovery requests was denied where defendant had not displayed a pattern of dilatory conduct, there was only evidence of minimal prejudice to title company, and the parties agreed to extend the discovery deadline by four months – [First Am. Title Ins. Co. v. Borniva](#), No. 8:19-cv-03233 (D. Md. Mar. 8, 2022)
- **Motion to Strike / Writ of Revival:** Defendant’s motion to strike title company’s writ of revival was denied where the time for challenging the underlying judgment had passed and the title company’s writ concerned the revival of the judgment and did not concomitantly revive defendant’s right to challenge the judgment – [First Am. Title Ins. Co. v. Chavannes](#), No. 661 MDA 2021 (Pa. Super. Ct. Mar. 2, 2022) (affirming denial of defendant’s motion to strike)
- **Duty to Defend / Indemnify:** Title company’s insurer did not have a duty to defend and/or indemnify title company with respect to claims that the title company charged and obtained closing fees it had no legal right to receive because the title company’s policy exempted coverage for such claims – [RLI Ins. Co. v. Coastline Title of Pinellas, LLC](#), No. 8:20-cv-00786 (M.D. Fla. Mar. 8, 2022) (affirming summary judgment in favor of title company’s insurer)

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