

Real Property & Title Insurance Update: Week Ending April 1, 2016

April 06, 2016

REAL PROPERTY UPDATE

- **Foreclosure:** remittitur, rather than reversal of summary judgment, is proper where lender failed to provide sufficient evidence of late charges at summary judgment – [Newman v. Ocwen Loan Servicing, LLC](#), No. 2D14-1953 (Fla. 2d DCA Mar. 30, 2016) (affirmed in part, reversed in part, and remanded)
- **Associations/Post-Foreclosure Assessments:** foreclosing mortgagee not liable for condominium association's interest, late fees, attorney's fees or costs in connection with assessments, per Section 720.3085(2)(c), Florida Statutes – [Catalina West Homeowners Ass'n., Inc. v. Fed. Nat'l Mortgage Ass'n.](#), No. 3D15-271 (Fla. 3d DCA Mar. 30, 2016) (affirmed)
- **Foreclosure/Standing:** bank filing original mortgage note with court in same condition as copy attached to complaint sufficient to establish possession at time complaint filed – [Ortiz v. PNC Bank, N.A.](#), Nos. 4D15-242 (Fla. 4th DCA Mar. 30, 2016) (affirmed)
- **Foreclosure/Business Records:** where bank's corporate representative testified that she had no knowledge of policies and procedures of entities that created payment history and notice letters, such documents amount to inadmissible hearsay – [Cassell v. Green Planet Servicing, LLC](#), Nos. 5D14-3369 (Fla. 5th DCA Apr. 1, 2016) (reversed and remanded)
- **Foreclosure/Dismissal:** order dismissing foreclosure action for failure to appear at case management conference was reversible error where failure to appear was from either lack of notice or incorrect calendaring – [U.S. Bank N.A. v. Martinez](#), No. 5D15-2928 (Fla. 5th DCA Apr. 1, 2016) (reversed and remanded)

TITLE INSURANCE UPDATE

- **Settlement Agent:** purchasers could prevail in consumer collection practices action against closing agent where they alleged that agent failed to disclose (i) relationship with sellers, and (ii) the absence of permits and zoning nonconformities that made the property incapable of being lawfully occupied – [Simon v. Hofgard](#), No. 15-cv-00929 (D.D.C. March 28, 2016) (memorandum opinion granting motion to remand)
- **Settlement Agent:** whether a reasonable consumer would consider the provision of settlement services and title insurance relating to the purchase of a property to encompass ensuring that the property had obtained the necessary permits and conforms to applicable zoning regulations is a novel legal issue – [Simon v. Hofgard](#), No. 15-cv-00929 (D.D.C. March 28, 2016) (memorandum opinion granting motion to remand)
- **Settlement Agent:** agent not entitled to damages under contract with HUD based on allegation that HUD precluded it from charging purchasers a fee in connection with closings in accordance with industry custom where the contract between agent and HUD was unambiguous – [Northwest Title Agency, Inc. v. United States](#), No. 15-248 (Fed. Cl. March 25, 2016) (opinion granting motion for summary judgment)
- **Evidence:** testimony about industry custom about title agent’s fees is irrelevant where the parties’ contract is unambiguous on the matter of fees – [Northwest Title Agency, Inc. v. United States](#), No. 15-248 (Fed. Cl. March 25, 2016) (opinion granting motion for summary judgment)
- **Malicious Prosecution:** borrower who alleged that title insurer was liable for slander of title for allowing an allegedly fraudulent deed of trust to be recorded was not entitled to maintain a second anti-SLAPP motion against title insurer’s cross-complaint where prior motion had already been denied [Fidelity National Title Ins. Co. v. Corthran](#), No. B258692 (Cal. App. March 23, 2016) (affirming order denying second anti-SLAPP motion)
- **Abstractor Liability:** purchaser’s claims against title abstractor previously dismissed as barred by statute of limitations were barred by collateral estoppel – [ALR Oglethorpe LLC v. Henderson](#), No. A15A2336 (Ga. App. March 23, 2016) (affirming order granting motion to dismiss)
- **Tort:** affirming summary judgment on Plaintiff’s claim for damages for negligent misrepresentation against title insurer – [Arjune v. Commonwealth Land Title Ins. Co.](#), No. 2015-02304 (NY App. March 23, 2016) (affirming summary judgment)

Related Practices

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