

Real Property & Title Insurance Update: Weeks Ending February 17 & 24, 2017

March 07, 2017

REAL PROPERTY UPDATE

- **Foreclosure:** foreclosing bank's allegation that borrowers were in a continuing state of default sufficient to satisfy five-year statute of limitations even though stated initial default date was more than five years prior to foreclosure complaint - [Desylvester v. Bank of New York Mellon](#), Case No. 2D15-5053 (Fla. 2d DCA February 22, 2017) (affirmed)
- **Appellate Jurisdiction:** denial of motion to vacate writ of possession not an appealable non-final order because not set forth in Rule 9.130(a)(3) - [Nacius v. One West Bank, FSB](#), Case No. 4D16-2853 (Fla. 4th DCA February 22, 2017) (appeal dismissed)
- **Foreclosure; Intervention:** intervention by purchaser of real property after final judgment of foreclosure entered should not have been allowed; trial court departed from essential requirements of law in permitting purchaser to intervene - [Federal National Mortgage Association v. Gallant](#), Case No. 4D16-3152 (Fla. 4th DCA February 22, 2017) (quashing order and remanding)
- **Foreclosure; Paragraph 22:** summary judgment improper where foreclosing bank failed to include mention of its paragraph 22 acceleration letter in affidavit in support of summary judgment to show it complied with conditions precedent to foreclose - [Galloway v. Suntrust Bank, et al.](#), Case No. 5D14-2878 (Fla. 5th DCA February 24, 2017) (reversed and remanded)

TITLE INSURANCE UPDATE

- **Damages/Statute of Limitations:** under Kansas law, causes of action for negligence and breach of fiduciary duty against title company accrue and are “reasonably ascertainable” only when plaintiff first claims ownership interest in mineral rights and defendant stops receiving royalty payments for such mineral rights, even though plaintiff suffered legal injury when title company recorded deed six years earlier without reserving mineral rights – [LCL, LLC. V. Falen](#), Case No. 115,434 (Kan. Dist. Ct. App. Feb. 17, 2017)(reversing summary judgment)
- **Offer of Judgment/Attorneys’ Fees:** title insurer entitled to attorneys’ fees based upon rejected offer of judgment because real issue in case was money damages despite count for injunctive relief - [Kahama VI, LLC v. HJH, LLC](#), Case No. 11-CV-2029-T-30TBM (M.D. Fla. Feb. 13, 2017)
- **Equitable of Subrogation:** Corporation that pledged property as security for corporate officer’s personal loan entitled to equitable subrogation to enforce lien of officer’s lender because corporation paid officer’s loan involuntarily based upon reasonable belief that payment was necessary for corporation’s protection - [Holley v. Holley & Taylor, Inc.](#), Case No. 11-15-00046 (Tex. Ct. App. Feb. 10, 2017)

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