

Real Property & Title Insurance Update: Weeks Ending November 18 & 25, 2016

December 02, 2016

REAL PROPERTY UPDATE

- **Settlement/Waiver:** borrowers permitted to raise affirmative defenses and counterclaims against lender where subject Loan Modification Agreement failed to include waiver of claims, affirmative defenses, or counter claims - [Rodriquez, et al., v. Ocean Bank, etc.](#), No. 3D15-1802 (Fla. 3rd DCA November 23, 2016) (summary final judgment reversed and remanded).
- **Temporary Injunctions:** trial court's order attempting to maintain status quo between parties was, in fact, a temporary injunction and failed to satisfy requirements of Florida Rule of Civil Procedure 1.610 - [Aligned Bayshore Marina, LLC, v. American Watersports Coconut Grove, LLC](#), No. 3D16-1435 (Fla. 3rd DCA November 23, 2016) (order is reversed and remanded).
- **Exclusion of Evidence:** remedy for erroneously excluded evidence is new trial; not consideration of excluded evidence to reach a different result - [Willson et. al, v. Big Lake Partners, LLC](#), No. 4D15-1782 (Fla. 3rd DCA November 23, 2016) (order is reversed and remanded).
- **Foreclosure/Liability for Assessments:** HOA entitled to seek entire amount of unpaid assessments because first mortgage holder failed to "initially join" HOA in mortgage foreclosure action - [Federal National Mortgage Association v. Mirabella at Mirasol Homeowners' Association, Inc.](#), No. 4D15-4792 (Fla. 4th DCA November 23, 2016) (affirmed).

TITLE INSURANCE UPDATE

- **Breach of Contract:** Lender could not sue for breach of contract because title policy was never issued due to title agents failure to advance funds to satisfy prior mortgage, which was condition precedent listed on title commitment. [The Bank of New York Mellon v. Commonwealth Land Title Ins.](#), Case No. 2708 EDA 2015 (Pa. Super. Ct. November 18, 2016)(Memorandum)

- **Agent Liability:** title insurer stated cause of action for breach of agency agreement against independent title insurance agent even though none of the provisions in the agreement specifically required the agent to record the insured deed of trust – [Stewart Title Guaranty Co. v. Lewis](#), Case No. 16-1372 (D.D.C Nov. 2, 2016) (memorandum opinion n& order denying motion to dismiss)
- **Agent Liability:** whether employee was acting within the scope of his employment for title insurance agent for alleged conversion of funds was a question of fact for the jury – [Roman v. Sage Title Group, LLC](#), Case No. 40 (Md. App. Sept. 27, 2016) (affirming in part, reversing in part judgment and remanding case for further proceedings)
- **Agent Liability:** expert testimony required to show that title company’s standard of care to require a title insurance policy as well as what the policy should provide – [Roman v. Sage Title Group, LLC](#), Case No. 40 (Md. App. Sept. 27, 2016) (affirming in part, reversing in part judgment and remanding case for further proceedings)

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