

Real Property, Financial Services, & Title Insurance Update: Week Ending April 9, 2021

April 09, 2021

Real Property Update

- **Foreclosure / Damages:** Party seeking foreclosure failed to present competent, substantial evidence to prove the total amount owed on the note – [Adamson v. Main Street Oaks, LLC](#), No. 2D19-3805 (Fla. 2d DCA Apr. 9, 2021) (reversed and remanded with instructions)
- **Bert Harris Act:** Trial court was correct in granting final summary judgment and rejecting appellant’s claim under the Bert J. Harris Jr. Private Property Rights Protection Act as the claimant no longer held legal title to the property at issue and thus was not entitled to relief under the act – [Dean Wish, LLC v. Lee Cty.](#), No. 2D19-4843 (Fla. 2d DCA Apr. 7, 2021) (affirmed; question certified)
- **Purchase Agreement:** Buyer’s claims were adequately covered or expressly contradicted by its purchase and sale agreement and thus not actionable where buyer sued seller alleging various causes of action relating to seller’s alleged misrepresentation and/or active concealment of the property’s physical condition – [Fla. Holding 4800, LLC v. Lauderhill Mall Inv., LLC](#), No. 4D20-174 (Fla. 4th DCA Apr. 7, 2021) (affirming summary judgment in seller’s favor)

Financial Services Update

No cases of interest to report.

Title Insurance Update

- **Legal Malpractice:** Title insurer could not proceed with its claim for legal malpractice based on defendant's failure to establish standing where the court conducted an alternative and independent analysis on the merits, ultimately finding against the insurer – [Old Republic Nat'l Title Ins. Co. v. Shulman, Rogers, Gandal, Pordy & Ecker, PA](#), No. 20-1049 (4th Cir. Apr. 2, 2021) (affirmed)
- **Motion to Remand / Snap Removal:** Title insurer's removal was improper because it occurred before any defendant had been served – [Deutsche Bank Nat'l Tr. Co. v. Old Republic Title Ins. Grp., Inc.](#), No. 3:20-cv-00535 (D. Nev. Apr. 2, 2021) (order granting motion to remand)
- **Fraudulent Joinder:** Plaintiff did not fraudulently join local title agent where a court could find the title agent liable under Nevada's Unfair Claims Practices Act – [Deutsche Bank Nat'l Tr. Co. v. Old Republic Title Ins. Grp., Inc.](#) No. 3:20-cv-00535 (D. Nev. Apr. 2, 2021) (order granting motion to remand)
- **Covered Risks:** Insured was not entitled to coverage for loss caused by a mechanic's lien where the insured agreed to remove standard ALTA form's covered risk 11(a) from the policy, which would have protected the insured against losses from mechanic's liens arising out of work commenced on or before the policy date – [Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 20-10268 (5th Cir. Mar. 10, 2021) (affirmed)
- **Bad Faith Claims:** As insured was not entitled to indemnification for uninsured losses, insured could not show that title insurer acted in bad faith in denying its claim – [Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 20-10268 (5th Cir. Mar. 10, 2021) (affirmed)
- **Duty to Defend:** Title insurer did not breach its duty to defend where insured failed to present sufficient evidence of harm resulting from title insurer's failure to provide insured with separate counsel – [Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 20-10268 (5th Cir. Mar. 10, 2021) (affirmed)

Related Practices

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