

Real Property, Financial Services & Title Insurance Update: Weeks Ending March 11 & 18, 2016

March 23, 2016

REAL PROPERTY UPDATE

- **Foreclosure/Standing:** substitute plaintiff failed to establish standing to enforce note and fact that original plaintiff had filed original note endorsed in blank before assignment did not establish substitute plaintiff's standing at time of trial – [Geweye v. Ventures Trust 2013-I-H-R et al.](#), No. 2D14-4668 (Fla. 2d DCA March 16, 2016) (reversed and remanded).
- **Deed Restrictions:** doctrine of impossibility of performance applied as defense to action seeking enforcement of deed restrictions where governing authorities categorically denied property owner permit for reconstruction of gate – [Marathon Sunsets, Inc., v. Coldiron](#), No. 3D15-1886 (Fla. 3rd DCA March 16, 2016) (reversed in part).
- **Foreclosure/Paragraph 22:** bank's default notice substantially complied with paragraph twenty-two of borrower's mortgage – [Bank of New York, etc. v. Mieses](#), No. 3D15-2042 (Fla. 3rd DCA March 16, 2016) (reversed and remanded).
- **Contracts/Specific Performance:** specific performance available to enforce contract for sale of homestead property – [Mirzataheri v. FM East Developers, LLC](#), etc., Nos. 3D15-1437 & 3D15-2330 (Fla. 3rd DCA March 16, 2016) (appeal affirmed).
- **Foreclosure:** plaintiff failed to authenticate loan payment history, failed to lay foundation for admission of its business records and failed to prove amount of interest owed by borrower – [McNair v. Nationstar Mortgage, LLC, et al.](#), No. 5D14-4140 (Fla. 5th DCA March 18, 2016) (appeal affirmed).

- **Foreclosure/Deficiency:** lender's cross-appeal from trial court's refusal to allow lender to pursue deficiency judgment not ripe where lender not yet attempted to obtain deficiency judgment and sale price not yet established – [Shaffer v. Wells Fargo Bank, N.A., et al.](#), No. 5D15-407 (Fla. 5th DCA March 18, 2016) (affirmed; cross-appeal dismissed)
- **Foreclosure/Indispensable Party:** final judgment of foreclosure improper where title holder of record precluded from participating in action – [MEH BYRON 4 LLC v. Fed. Nat'l Mortgage Ass'n](#), Case No. 3D15-1476 (Fla. 3d DCA Mar. 9, 2016) (reversing and remanding final judgment of foreclosure)
- **Foreclosure/Conditions Precedent:** lender's substantial compliance with mortgage's paragraph 22 notice of default provision adequate to satisfy mortgage's condition precedent to bringing foreclosure suit – [Lopez v. JPMorgan Chase Bank, N.A.](#), Case No. 4D14-4504 (Fla. 4th DCA Mar. 9, 2016) (affirmed)
- **Foreclosure/Conditions Precedent:** lender's substantial compliance with subject mortgage's paragraph 22 notice of default provision adequate to satisfy mortgage's condition precedent to bringing foreclosure suit, especially where borrower not prejudiced by any language variation – [Ortiz v. PNC Bank, N.A.](#), Case Nos. 4D15-242 (Fla. 4th DCA Mar. 9, 2016) (affirmed)
- **Homestead Exemption/Calculation:** in calculating how much of proceeds from sale of homestead exempt from creditors court must determine how much homeowner intended on reinvesting in another homestead *prior to and at the time of sale* – [Lane v. Cunniffe](#), Case No. 4D15-2969 (Fla. 4th DCA Mar. 9, 2016) (reversed and remanded)
- **Foreclosure/Standing:** where endorsements on allonge to note undated and bank's witness could not testify when endorsements placed on allonge, bank's reliance on a pooling and servicing agreement to prove standing insufficient – [Lewis v. U.S. Bank Nat'l Ass'n](#), Case No. 4D14-815 (Fla. 4th DCA Mar. 9, 2016) (reversed and remanded)
- **Foreclosure/Due Process:** after lender moved to vacate final judgment of foreclosure, foreclosure sale, and certificate of title because they contained incorrect legal description, trial court dismissing case without notice or hearing violated lender's due process rights – [Federal Nat'l Mortgage Ass'n v. Sanchez](#), Case No. 4D14-3850 (Fla. 4th DCA Mar. 9, 2016) (reversed and remanded)

TITLE INSURANCE UPDATE

- **Attorney's Fees:** awarding insured's attorney's fees against title insurer pursuant to Missouri's vexatious refusal statute after insured prevailed on breach of duty to indemnify claim – [Captiva Lake Investments, LLC v. Fidelity National Title Ins. Co.](#), Case No. 4:10-CV-1890 (E.D. Mo. March 7, 2016) (memorandum and order)

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