

# Real Property & Title Insurance Update: Week Ending July 15, 2016

July 20, 2016

## REAL PROPERTY UPDATE

- **Foreclosure/Unclean Hands:** defense of unclean hands insufficient where borrower alleges bank's loan officer inflated borrower's income and assets to qualify for loan where borrower signed off on such disclosures - [Wells Fargo Bank, N.A. v. Williamson](#), Case No. 4D15-286 (Fla. 4th DCA July 13, 2016) (Reversed and remanded)
- **Foreclosure/Standing:** fact issue remained regarding standing where substituted plaintiff's summary judgment affidavit stated it had owned and held the note since before action was filed, yet action was filed by predecessor plaintiff - [Craven-Lazarus v. Pennymac Holdings, LLC](#), Case No. 4D15-1292 (Fla. 4th DCA July 13, 2016) (reversed and remanded)
- **Eviction/Illegality of Contract:** summary judgment in favor of landlord for breach of lease improper where subsequent change in law made one of the lease provisions illegal - [Lucas Games, Inc. v. Morris AR Associates, LLC](#), Case No. 4D15-1516 (Fla. 4th DCA July 13, 2016) (reversed and remanded)
- **Service:** appeal from order denying motion to quash service does not deprive circuit court of jurisdiction to proceed with case - [Cruz v. Citimortgage, Inc.](#), Case Nos. 4D15-3875, 4D16-835 (Fla. 4th DCA July 13, 2016) (denying petition for writ of prohibition)
- **Foreclosure/Priority of Lien:** foreclosure action of junior lienholder does not extinguish senior lienholder's interest in property and senior lienholder is entitled to relief from any judgment that purports to extinguish its interest - [Bank of Am., N.A. v. Kipps Colony II Condo. Ass'n, Inc.](#), Case Nos. 2D14-858, 2D14-4436 (Fla. 2d DCA July 15, 2016) (reversed and remanded)

- **Foreclosure:** where borrower alleges “the copy of the note attached to the complaint does not contain Defendant’s signature and is not the note signed by the Defendant” he has specifically pled the affirmative defense of authenticity of signature - [Sanabria v. Pennymac Mortgage Investment Trust Holdings I, LLC](#), Case No. 2D15-866 (Fla. 2d DCA July 15, 2016) (Reversed and remanded)
- **Foreclosure:** Florida state courts are the proper venue in which to seek a deficiency judgment subsequent to a foreclosure sale, pursuant to Section 48.193(1)(a)(3), Florida Statutes (2014), even where plaintiff files a separate action to recover deficiency - [Aluia v. Dyck-O’Neal, Inc.](#), Case No. 2D15-2059 (Fla. 2d DCA July 15, 2016) (affirmed in part, reversed in part)
- **Foreclosure:** appeal challenging trial court’s order discharging lis pendens was timely when filed within 30 days of discharge order, even though filed more than 30 days after original order requiring plaintiff to post lis pendens bond or be subject to discharge order - [Angler’s Reef Property Owners’ Ass’n v. Guirm Investment LLC](#), Case No. 3D15-2244 (Fla. 3d DCA July 13, 2016) (denying motion to dismiss appeal)
- **Foreclosure:** where bank put on no evidence of interest owed to it pursuant to loan, improper for trial court to include award of interest in final judgment - [Marsden v. BAC Home Loans Servicing, L.P.](#), Case No. 4D14-1623 (Fla. 4th DCA July 13, 2016) (reversed and remanded)

## TITLE INSURANCE UPDATE

- **Full Credit Bid:** questions regarding whether full-credit bid constitutes payment under Sections 2 or 9 of lender’s title insurance policy when lender purchases property at a trustee’s sale, as well as scope of policy coverage after a full-credit bid, certified to [Arizona Supreme Court - Equity Income Partners, LP v. Chicago Title Ins. Co.](#), Case No. 14-15388 (9<sup>th</sup> Cir. July 12, 2016) (Memorandum Order)
- **Owner’s Policy Coverage:** owner, a convicted-mortgage-fraudster-turned-fraud-victim, denied coverage under owner’s policy when insurer paid lender and owner suffered no capitol loss in sham sale of property - [Marchetti v. Chicago Title Ins. Co.](#), Case No. 15-1240 (7<sup>th</sup> Cir. July 12, 2016)
- **Removal:** plaintiff suing insurer for failing to pay claim prevented from joining title agent as additional defendant to defeat diversity jurisdiction because full relief could be provided among existing parties - [First Missouri Bank v. Chicago Title Ins. Co.](#), Case No. 2:16CV5CDP (E.D. Mo. July 12, 2016)(Memorandum Order)

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