

Real Property & Title Insurance Update: Weeks Ending October 21 & 28, 2016

November 02, 2016

REAL PROPERTY UPDATE:

- **Condominium:** allocation of square footage within the declaration controls where there is lack of clarity in both the perimetrical boundaries definition and the diagram of the lobby area in question - [Shores of Panama Club, LLC, v. Shores of Panama Resort Community Association Inc.](#), et al., No. 1D16-0920 (Fla. 1st DCA October 28, 2016) (reversed and remanded).
- **Foreclosure/Intervenor:** intervenor cannot inject an unpleaded, waived defense of a defaulted party for the court's adjudication - Ventures Trust 2013-I-H-R, as successor in interest to [JPMorgan Chase Bank, National Association. v. Asset Acquisitions and Holdings Trust](#), No. 2D15-1923 (Fla. 2d DCA October 28, 2016) (reversed and remanded).
- **Foreclosure/Default Notice/Summary Judgment Evidence:** defendants' summary judgment and dismissal of complaint reversed where defendants' affidavits were insufficient on their face to establish entitlement to judgment as a matter of law, where affidavits did not address whether plaintiff fulfilled the notice requirement by sending the notice via first class mail - [JPMorgan Chase Bank N.A. v. Ostrander](#), No. 2D15-3935 (Fla. 2d DCA October 28, 2016) (reversed and remanded).
- **Foreclosure/Standing:** plaintiff failed to establish it had standing to foreclose, where only proof of standing was a screen shot of a computer-generated document referred to as a Loan Transfer History - [Miller v. Bank of America, N.A., et al](#), No. 5D15-780 (Fla. 5th DCA October 28, 2016) (reversed and remanded).

- **Offers of Judgment/Attorneys' Fees:** offers for settlement that failed to state whether they included attorneys' and whether attorneys' fees were part of the legal claim were not invalid where attorneys' fees were not sought in the pleadings; accordingly, the Florida Supreme Court declined to invalidate offers of judgment solely for violating a requirement of rule 1.442 of the Florida Rules of Civil Procedure that section 768.79, Florida Statutes, does not require – [Kuhajda v. Borden Dairy Co. of Alabama, LLC.](#), No. SC15-1682 (Fla. Oct. 20, 2016)
- **Foreclosure/Standing:** plaintiff failed to present sufficient proof showing it had standing to enforce a note containing an undated blank endorsement at the time it commenced foreclosure action – [Walton v. Deutsche Bank Nat'l Trust Co., as Trustee](#), No. 1D15-3761 (Fla. 1st DCA Oct. 19, 2016) (reversed and remanded for entry of an order of dismissal)
- **Foreclosure/Subject Matter Jurisdiction:** trial court's jurisdiction in foreclosure action expired prior to entry of summary final judgment because court had previously dismissed bank's complaint for failure to comply with court order requiring it to file original documents and no rehearing, notice of appeal, or motion for relief was filed – [Franklin v. Bank of America, N.A.](#), No. 1D15-4296 (Fla. 1st DCA Oct. 19, 2016) (reversed and remanded for entry of an order of dismissal)
- **Foreclosure/Service of Process:** borrower did not waive objection to service of process by making an appearance in case by filing a motion for extension of time to respond to complaint – [Keeter v. The Bank of New York Mellon f/k/a The Bank of New York, as Trustee](#), No. 1D15-1814 (Fla. 1st DCA Oct. 21, 2016) (reversed and remanded for further proceedings)
- **Foreclosure/Jurisdiction:** trial court erred in granting motion for leave to amend filed by bank's successor, which sought to assert counts for breach of promissory note and equitable lien, because a final judgment of foreclosure had already been entered and could not be reversed nor reopened – [Garcia v. Christiana Trust, etc.](#), No. 3D16-735 (Fla. 3d DCA Oct. 19, 2016) (granting petition for writ of certiorari and quashing order)

TITLE INSURANCE UPDATE:

- No cases of interest.

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