

Real Property & Title Insurance Update: Week Ending March 24, 2017

March 29, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Condition Precedent:** servicer did not meet its burden of proving it satisfied condition precedent of giving notice of acceleration by failing to provide evidence that notice letter had been mailed or personal knowledge of company's routine business practice in mailing letters - [Allen v. Wilmington Trust, N.A., Successor Trustee to CITIBANK, N.A., as Trustee f/b/o the Registered Holders of Structured Asset Mortgage Investments II Trust 2007-AR6, Mortgage Pass-Through Certificates, Series 2007-AR6 et al.](#), No. 2D15-2976 (Fla. 2d DCA March 24, 2017) (reversed and remanded).
- **Foreclosure/Intervention:** trial court did not err in denying motion to intervene in mortgage foreclosure action by party which held senior judgment lien against mortgaged properties where said party moved to dismiss based on its alleged lien priority and its counsel threatened sanctions under section 57.105 - [Zenith Insurance Company v. Metrobank S.A., et al.](#), (Fla. 3rd DCA March 22, 2017) (affirmed).
- **Foreclosure/Standing:** bank not required to demonstrate loan servicing agent's authority to file law suit, where loan servicing agent merely verified complaint as servicer and attorney-in-fact - [Deutsche Bank National Trust Company, Solely as Trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-6 v. Applewhite, et al.](#), No. 4D15-4512 (Fla. 4th DCA March 22, 2017) (reversed and remanded).

TITLE INSURANCE UPDATE

- **Constructive Trust:** a lender is not entitled to a constructive trust or an equitable mortgage to create priority over a federal tax lien, where lender did not have a valid mortgage or protected security interest when federal tax lien was imposed – [Bank of New York Mellon v. Ashley](#), Case No. 14-2914 (D. Mar. March 20, 2017)(denying motion for summary judgment as to constructive trust and equitable mortgage)
- **Equitable Subrogation/Federal Tax Liens:** a lender is entitled to a first priority lien over a federal tax lien by reason of equitable subrogation, where borrower refinanced prior to the imposition of the tax lien and proceeds of the lender’s invalid mortgage discharged a prior valid mortgage – [Bank of New York Mellon v. Ashley](#), Case No. 14-2914 (D. Mar. March 20, 2017)(granting motion for summary judgment as to equitable subrogation)
- **Tax Liens:** city may not foreclose tax liens, when city records erroneously indicated liens were satisfied at time of purchase and borrower ‘s title search indicated there were no open tax liens – [Equity Inv. & Mortg. Co. v. Smith](#), Case No. 58583/2015 (N.Y. Ct. App. March 21, 2017)(granting motion for summary judgment)

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