

Real Property & Financial Services Update: Week Ending March 15, 2019

March 16, 2019

Real Property Update

- **Deed Restriction / MRTA:** Marketable Records Title to Real Property Act extinguished association's restrictions where restrictions were more than thirty years old, predating lot owner's root of title, and association's notice filed to preserve its restrictions was not filed within the thirty-year period - [Lyday v. Myakka Valley Ranches Improvement Ass'n, Inc.](#), No. 2D17-1726 (Fla. 2d DCA Mar. 15, 2019) (reversed and remanded)
- **Deficiency / Estoppel:** statute of limitations for deficiency judgment does not begin to run until the foreclosure judgment and foreclosure sale; borrowers required to show detrimental change in position as a result of reliance to prove equitable estoppel defense - [Dyck-O'Neal, Inc. v. Norton](#), No. 2D17-4968 (Fla. 2d DCA Mar. 15, 2019) (reversed and remanded)
- **Foreclosure / Judgment for Unpaid Debt:** bank entitled to entire unpaid mortgage loan under acceleration clause, including payment amounts that accrued before the five-year statute of limitations - [Grdic v. HSBC Bank USA, NA](#), No. 2D17-818 (Fla. 2d DCA Mar. 13, 2019) (affirmed)
- **Lis Pendens / Fair Nexus:** judgment creditor established requisite fair nexus between the apparent legal or equitable ownership of property described in notices of lis pendens and dispute embodied in supplemental proceeding to move forward with its allegations to recover judgment debt - [LB Judgment Holdings, LLC v. Boschetti](#), Nos. 3D18-1190, 3D18-1323, 3D18-1726 (Fla. 3d DCA Mar. 13, 2019) (affirmed in part, reversed in part)

- **Lis Pendens / Damages:** trial court's computation of fees and costs for wrongful lis pendens supported by competent, substantial evidence where court followed methodology for "anticipated attorney's fees incurred by the [property owner] in the event the lis pendens filed by [a lien claimant] was unjustified" - [LB Judgment Holdings, LLC v. Boschetti](#), Nos. 3D18-1190, 3D18-1323, 3D18-1726 (Fla. 3d DCA Mar. 13, 2019) (affirmed in part, reversed in part)
- **Lis Pendens / Bond:** trial court's order setting seventeen separate bond amounts for properties owned by impleaded properties affirmed as pretrial discovery on fraudulent transfer and alter ego allegations was far from complete - [LB Judgment Holdings, LLC v. Boschetti](#), Nos. 3D18-1190, 3D18-1323, 3D18-1726 (Fla. 3d DCA Mar. 13, 2019) (affirmed in part, reversed in part)
- **Foreclosure / Personal Jurisdiction / Standing:** trial court lacked personal jurisdiction over defendants where lender did not obtain personal service of process - [Whittaker v. PNC Bank, Nat'l Ass'n](#), No. 5D18-2916 (Fla. 5th DCA March 15, 2019) (reversed and remanded)

Financial Services Update

- **FDCPA / Statute of Limitations:** loan servicer did not violate FDCPA by attempting to collect a time-barred debt under borrower's mortgage, and borrower's contention that some of the amount claimed to be owed by loan servicer was barred from recovery under Florida's five-year statute of limitations was incorrect - [Green v. Specialized Loan Servicing LLC](#), No. 17-15681 (11th Cir. Mar. 11, 2019) (affirming order of dismissal).

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