

Real Property, Financial Services, & Title Insurance Update: Week Ending May 10, 2019

May 10, 2019

Real Property Update

- **Ad Valorem Taxes:** in a matter of first impression, county's immunity from taxation does not extend extraterritorially to property it owns in another Florida county - [Joiner v. Pinellas Cnty., Fla.](#), No. 2D17-1040 (Fla. 2d DCA May 3, 2019) (reversed and remanded)
- **Foreclosure / Dismissal:** trial court erred by dismissing second filed foreclosure action based upon same default alleged in first foreclosure action dismissed, without prejudice, for failing to send a new default notice - [HSBC Bank USA, N.A., as Trustee v. Leone](#), No. 2D17-2851 (Fla. 2d DCA May 3, 2019) (reversed and remanded)
- **Foreclosure / Attorneys' Fees:** homeowner that asserted lack of standing as defense to foreclosure was entitled to recover attorneys' fees after lender dismissed complaint, without prejudice, because loan documents (i) contained an attorneys' fee provision and (ii) reflected the parties to the loan agreement were the homeowner and lender, and trial court never made a judicial determination to the contrary - [Grosso v. HSBC Bank USA, N.A., as Trustee](#), No. 4D17-2874 (Fla. 4th DCA May 8, 2019) (reversed and remanded)
- **Summary Judgment:** court erred by entering summary judgment in favor of real estate agent and property manager where there remained a dispute concerning his knowledge of material defects at the time of sale and whether he breached a duty to disclose same - [Blakeley v. Livorsi](#), Nos. 2D17-3782, 2D17-4165 (Fla. 2d DCA May 8, 2019) (reversed and remanded)

- **Foreclosure / Corporate Representative Deposition:** trial court erred by allowing borrower to designate a corporate representative for bank and requiring him to appear in county where action is pending because designated person was employed by servicer (not bank), and worked and resided out of state, and rule 1.310(b)(6) authorizes the bank (not the borrower) to designate one or more of its officers, directors, managing agents, or other persons as its corporate representative to testify - [US Bank Nat'l Ass'n, as Trustee v. Williamson](#), No. 5D18-3992 (Fla. 5th DCA May 10, 2019) (petition granted, and order quashed)
- **Statute of Limitations:** trial court erred by applying the 10-year statute of limitations for claims "founded on the design, planning or construction of an improvement to real property[;]" real estate owner's claim against engineer was for professional malpractice, and applicable 2-year statute of limitations runs from time claim was known or knowable - [Manney v. MBV Eng'g, Inc.](#), No. 5D18-1773 (Fla. 5th DCA May 10, 2019) (reversed and remanded)
- **Intervention:** trial court erred by denying motion to intervene without conducting a hearing and without stating basis for denial in order - [Troncoso v. Larrain](#), No. 3D19-393 (Fla. 3d DCA May 8, 2019) (reversed and remanded)

Financial Services Update

- **FDCPA / 1692e / Itemization of Charges:** failing to itemize charges on a demand letter can be misleading - [Meyer v. Fay Servicing, LLC](#), 2:19-cv-88-FtM-38UAM (M.D. Fla. May 7, 2019) (denying in part motion to dismiss)
- **FCRA / Preemption:** FCRA does not preempt New York law requiring "pre-pull" disclosure - [Aghaeepour v. N. Leasing Sys., Inc.](#), 14 cv 5449 (NSR) (S.D.N.Y. May 8, 2019)

Title Insurance Update

- **Expert Witnesses:** title insurance company executive's opinions based on 30 years of experienced and capable title searching were properly excluded because he was not disclosed as an expert pursuant to Rule 26 - [United States v. Z Inv. Prop., LLC](#), No. 18-1915 (7th Cir. Apr. 18, 2019) (opinion affirming district court's exclusion of affidavit and granting summary judgment)
- **Exclusion 3(a):** title insurer owes no duty to defend where underlying action alleged that *insured* recorded a fraudulent deed and there was no possible factual or legal basis on which insurer might be obligated to indemnify insured - [Queens Org., LLC v. First Am. Title Ins. Co.](#), No. 2016-13222 (N.Y. App. Ct. May 8, 2019) (decision and opinion affirming denial of insured's summary judgment motion and granting insured's motion)

- **Recoupment:** title insurer unable to recover \$2 million in loan proceeds procured from a fraudulent loan transaction under theory of conversion from a company that sold gold bullion to the fraudsters where company did not have actual or constructive notice the cash used to purchase the bullion was stolen - [Old Republic Nat'l Title Ins. Co. v. JM Bullion, Inc.](#), No. B286916 (Cal. App. May 7, 2019) (affirming summary judgment)
- **Exclusion 3(d):** title insurer entitled to deny coverage where HOA assessments become due—and related lien is recorded—after date of the policy, even though under Nevada law the HOA lien is perfected as of the date of the recording of the CC&Rs - [Wells Fargo Bank, N.A. v. Commonwealth Land Title Ins. Co.](#), No. 2:18-cv-00494 (D. Nev. May 9, 2019) (order denying plaintiff's motion for summary judgment and granting defendant's motion for summary judgment)
- **Exceptions:** exception excluding coverage for CC&Rs but summarizing a CC&R provision that HOA liens would not affect deeds of trust is not an assurance that the CC&R provision was correct as a matter of law - [Wells Fargo Bank, N.A. v. Commonwealth Land Title Ins. Co.](#), No. 2:18-cv-00494 (D. Nev. May 9, 2019) (order denying defendant's motion to dismiss, denying plaintiff's motion for summary judgment, and granting defendant's motion for summary judgment)

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