

Real Property, Financial Services, & Title Insurance Update: Week Ending July 24 , 2020

July 24, 2020

Real Property Update

- **Condo Termination / Mandatory Arbitration:** Unit owner could not pursue claims relating to condo termination for failure to comply with Florida Statutes section 718.117(16), which required unit owners to contest the condominium termination plan by petition for mandatory nonbinding arbitration pursuant to Florida Statutes section 718.1255 within 90 days after the termination plan is recorded – [Cornerstone 417, LLC v. Cornerstone Condo. Ass'n, Inc.](#), No. 5D19-1621 (Fla. 5th DCA July 24, 2020) (affirming dismissal with prejudice)
- **Proceedings Supplementary / Fraudulent Transfer of Real Property / Statute of Limitations:** Judgment creditor's fraudulent transfer claim against third-party recipient of judgment debtor's real property filed more than four years after recorded deed was time-barred by chapter 726 notwithstanding longer limitations period in proceedings supplementary, Florida Statutes section 56.29 – [UOWEIT, LLC v. Fleming](#), No. 4D19-270 (Fla. 4th DCA July 22, 2020) (affirming dismissal based on statute of repose/statute of limitations)
- **Condition Precedent:** Demand letter sent to tenants was not evidence of notice to guarantors who had same address as tenants, and did not satisfy condition precedent – [Graham Cos. v. Shick Park](#), No. 3D19-1280 (Fla. 3d DCA July 22, 2020) (dismissal affirmed)
- **Real Estate License Appeal:** Applicant could not appeal the Florida Real Estate Commission's denial of Florida real estate associate's application for licensure because applicant failed to appeal to agency first and because the final order was supported by competent substantial evidence – [Quinn v. State of Fla. Dep't of Bus. & Prof'l Reg., Fla. Real Estate Comm'n](#), No. 3D19-1043 (Fla. 3d DCA July 22, 2020) (affirming dismissal)

- **Ejectment / Constructive Trust:** Person who held legal title to real property for beneficiaries pursuant to a constructive trust could not maintain lawsuit for ejectment of the beneficiaries from their property – [Silva v. Noval](#), No. 3D19-149 (Fla. 3d DCA July 22, 2020) (affirmed)

Financial Services Update

- No cases of interest to report as of now.

Title Insurance Update

- **Exclusion 3(a):** Insured owner whose agent knew of prior unreleased mortgage and who undertook to have that mortgage released but failed to do so and proceeded to close the purchase and loan transaction suffered, agreed to, and/or assumed the mortgage, and title insurer did not breach the policy by denying owner's claim – [Mazel v. Las Cruces Abstract & Title Co.](#), No. 1:18-ap-01057 (Bankr. D.N.M. July 17, 2020) (opinion granting summary judgment)
- **Compensable Damages:** Insured owner has no claim for damages pursuant to policy where insurer has paid off prior mortgage and is not entitled to recover alleged damages for loss of equity and deficiency judgment resulting from its failure to pay its own mortgage and its lender's resulting foreclosure – [Mazel v. Las Cruces Abstract & Title Co.](#), No. 1:18-ap-01057 (Bankr. D.N.M. July 17, 2020) (opinion granting summary judgment)
- **Regulatory Action / Cybersecurity:** New York Department of Financial Services filed charges against First American Title Insurance Co. under New York's Cybersecurity Regulation, part 500 of title 23 of the New York Codes, Rules, and Regulations and based on the vulnerability that came to light in 2019 – [In re First Am. Title Ins. Co.](#), No. 2020-0030-C (July 21, 2020) (statement of charges and notice of hearing)

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