

Real Property & Title Insurance Update: Week Ending July 14 & 21, 2017

July 25, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Standing:** note owner had constructive possession of promissory note in original servicer's physical possession of blank-endorsed note when it filed the complaint, and had standing to enforce same - [FNMA v Rafaeli, et al.](#), Case No. 4D16-1376 (Fla. 4th DCA July 19, 2017) (reversed and remanded)
- **Prevailing Party Fees:** plaintiff that prevailed on claims of complaint and was awarded substantial damages was prevailing party entitled to attorneys' fees; although defendant prevailed on counterclaim, its award was not substantial enough to override the outcome on plaintiff's complaint - [Hough Roofing, Inc. v Don Facciobene, Inc., et al.](#), Case No. 5D15-2878 (Fla. 5th DCA July 21, 2017) (reversed).
- **Dismissal of Appeal:** notice of appeal filed by non-attorney on behalf of trust constitutes the unauthorized practice of law and is ineffective - [Lavine, Trustee v JPMorgan Chase Bank, etc., et al.](#), Case No. 5D15-2450 (Fla. 5th DCA July 21, 2017) (appeal dismissed).
- **Standing:** title holder that purchased property after lis pendens had been filed and who was not named a party-defendant and did not seek to intervene in foreclosure action lacked standing to challenge foreclosure judgment under Rule 1.540(b) - [Chalisle v U.S. Bank, NA, as Trustee](#), Case No. 3D17-58 (Fla. 3d DCA July 19, 2017) (appeal dismissed for lack of standing).
- **Prejudgment Interest:** prejudgment interest is an element of damages, which does not need to be specially pleaded - [The Leila Corp. of St. Pete, et al., v Fareed Ossi, et al.](#), Case No. 2D15-3279 (Fla. 2d DCA July 21, 2017)

- **Foreclosure/Res Judicata:** Rule 1.420, often referred to as the “two dismissal rule,” did not bar a third foreclosure action based on the same note and mortgage, because the open-ended series of defaults included different missed payments at issue in each suit. [Forero v. Green Tree Servicing, LLC](#), No. 1D16-2151 (Fla. 1st DCA July 14, 2017) (affirmed).
- **Foreclosure/Default:** Final judgment reversed where a trial court refused to allow the defendant to raise affirmative defenses that were included in an answer filed two days before a default was entered. [Singh v. U.S. Bank, N.A.](#) as trustee for the certificate holders of Citigroup Mortgage Loan Trust, Inc. asset-backed pass-through certificates, series 2007-AMC1, et al., No. 2D16-1462 (Fla. 2d DCA July 14, 2017) (reversed and remanded).
- **Corporate Status:** Plaintiff failed to timely raise defendant’s corporate (inactive) status prior to entry of final judgment and after notice of appeal. [Building B1, LLC v. Component Repair Services, Inc.](#), No. 3D16-1286 (Fla. 3rd DCA July 12, 2017) (affirmed).
- **Foreclosure/Statute of Limitations:** Fourth District Court of Appeals joins Second District Court of Appeals in concluding that the allegations of the complaint in underlying action that the borrowers were in a continuing state of default at the time of filing of the complaint was sufficient to satisfy the five-year statute of limitations. [Kebreau v. Bayview Loan Servicing, LLC et al.](#), No. 4D16-2010 (Fla. 4th DCA July 12, 2017) (affirmed in part, reversed in part).
- **Landlord/Tenant/Contract Interpretation:** A ninety-nine-year lease clearly and unambiguously granted lessor a right to reappraise the property at specified dates, and only those dates. [City of Pompano Beach, Florida v. Beatty](#), as Trustee of the Nancy C. Beatty Revocable living Trust, dated October 26, 1990 et al., No. 4D16-2621 and 4D16-3699 (Fla. 4th DCA July 12, 2017) (reversed and remanded).

TITLE INSURANCE UPDATE

- **Expert Testimony:** excluding Bush Nielsen's testimony as to the measure of damages under a title policy as legal opinion on a matter of fact properly consigned to the trier of fact under Connecticut law – [Chicago Title Ins. Co. v. Lapuma](#), No. CV156018031S (Conn. Superior, June 9, 2017).
- **Statute of Limitations:** granting title insurer's motion to dismiss on Utah statute of limitations that runs from "inception of loss," holding that time to be when insured was named in quiet title suit, not when he lost it – [Park v. First American Title Ins. Co.](#), Case No. 2:17-CV-280-DAK (D. Ut., July 12, 2017).
- **RESPA:** granting summary judgment to law firm that referred business to title insurance agent affiliated, holding that it satisfied RESPA's affiliated business arrangement safe harbor – [CFPB v. Borders & Borders, PLC](#), Case No. 3:13-CV-01047-CRS-DW (W.D. Ky., July 13, 2017).

- **Title Search Negligence:** affirming summary judgment to title agent against negligent searchclaim where agent prepared only a title commitment and plaintiff did not order an abstract or title search – [Russo v. PPN Title Agency, LLC](#), (N.J. Superior, July 30, 2017).
- **Escrow Agent Negligence:** dismissing negligence claim against closing agent for short payoff, holding that agent's only duties ran to lender, not to borrower that did not buy title policy or give closing agent any instructions – [Ruvalcaba v. Ocwen Loan Svc., LLC](#), Case No. 15-cv-00744-BAS(DHB) (S.D. Cal., July 13, 2017).
- **Unauthorized Practice of Law:** holding that lender and title insurance agent did not engage in unauthorized practice of law because licensed attorneys were involved in every significant step in the transactions – [Boone v. Quicken Loans, Inc.](#), (S.C. Sup. Ct., July 19, 2017).
- **Title Insurance Policy Breach:** Affirming judgment for title insurer that cured title defect in 18 months, holding that delay did not proximately cause building to be demolished and owner's refinancing to fall through and that loss of property's value was not recoverable under title policy – [Wade v. Stewart Title Guaranty Co.](#), 2017 IL App (1st) 161765, Case No. 1-16-1765 (Ill App. 1st Dist., June 30, 2017)

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