

Real Property & Title Insurance Update: Week Ending March 25, 2016

March 30, 2016

REAL PROPERTY UPDATE

- **Ad Valorem Taxation:** lessee holding 99-year leasehold interest in unimproved land owned by government entity is not “equitable owner” and thus not liable for ad valorem property taxes pursuant to sec. 196.199, Fla. Stat. (2011) – [Island Resorts Investments, Inc. v. Jones](#), No. 1D15-2916 (Fla. 1st DCA Mar. 21, 2016) (reversed and remanded)
- **Foreclosure:** lender not entitled to final judgment of foreclosure where trial evidence insufficient to establish cause of action, especially where no note, mortgage, or allonge introduced into evidence – [66 Team LLC v. JP Morgan Chase Bank, N.A.](#), No. 3D15-1140 (Fla. 3d DCA Mar. 23, 2016) (reversed and remanded)
- **Foreclosure:** involuntary dismissal of foreclosure action improper where granted prior to completion of lender’s case in chief – [Deutsche Bank Nat. Trust Co. v. Altos Del Mar LLC](#), Nos. 3D15-1647 (Fla. 3d DCA Mar. 23, 2016) (reversed and remanded)
- **Foreclosure:** where bank’s corporate representative’s knowledge of how bank became holder of note limited to what representative learned from search on internet, involuntary dismissal proper – [Sosa v. The Bank of New York Mellon](#), Nos. 4D14-810 (Fla. 4th DCA Mar. 23, 2016) (reversed and remanded)
- **Foreclosure:** lender not entitled to final judgment of foreclosure where it did not put on any competent evidence at trial to show it was holder of note at filing of complaint – [Cruz v. JP Morgan Chase Bank, N.A.](#), No. 4D14-3799 (Fla. 4th DCA Mar. 23, 2016) (reversed)
- **Foreclosure:** borrower entitled to involuntary dismissal where bank presented no evidence it was holder of note at the time complaint filed – [Devries v. Citimortgage Inc.](#), No. 5D14-1887 (Fla. 5th DCA Mar. 24, 2016) (reversed and remanded)

TITLE INSURANCE UPDATE

- **Insured:** when insured mortgagee assigns the note and mortgage, the assignee becomes the insured under the title insurance policy, and the original mortgagee loses its status as insured and retains only the ability to recover for any loss during the course of its ownership - [JP Morgan Chase Bank, N.A., Trustee v. Stewart Title Ins. Co.](#), No. 8115/11 (Supr. N.Y. March 14, 2016) (denying motion for leave to amend to add additional plaintiff and granting motion for summary judgment)
- **Statute of Limitations:** plaintiff who has assigned the note and mortgage and has not sustained damages lacks standing to bring an action on a title insurance policy and may not join assignee as an additional plaintiff where the statute of limitations on assignee's claim has run - [JP Morgan Chase Bank, N.A., Trustee v. Stewart Title Ins. Co.](#), No. 8115/11 (Sup. N.Y. March 14, 2016) (denying motion for leave to amend to add additional plaintiff and granting motion for summary judgment)
- **Title Company:** buyer has no claim under state or federal law for contract that gives buyer a financial incentive to use a designated title company but does not require buyer to use the designated company - [Wenig Saltiel LLP v. Specialized Loan Servicing, LLC](#), No. 003825 (N.Y. March 4, 2016) (order granting motion to dismiss)
- **Trial:** court order striking trial date and partially "staying" proceedings pending mediation and discovery did not toll California statutory 5 year period of time for case to be brought to trial - [Gaines v. Fidelity National Title Ins. Co.](#), No. S215990 (Sup. Ct. Cal. Feb. 25, 2016) (affirming dismissal)
- **Agency Agreement:** breach of agency agreement was not barred by statute of limitations or laches absent prejudice despite long delay - [Commonwealth Land Title Ins. Co. v. Sienna Abstract, LLC](#), No. 2014-09382 (Supr. N.Y. Feb. 24, 2016) (affirming order granting motion to amend complaint)
- **Negligent Misrepresentation:** affirming defense judgment on negligent misrepresentation claim - [Arjune v. Commonwealth Land Title Ins. Co.](#), No. 2015-02304 (Supr. N.Y. March 23, 2016) (affirming order granting summary judgment)
- **E&O:** title insurer's suit against title agent not covered under illegal profit exclusion but same exclusion did not bar title agent's principal's claim under same E&O policy - [National Title Agency, LLC v. United Nation Ins. Co.](#), No. 2:15-cv-160 (D. Utah March 21, 2016) (memorandum decision and order granting in part, denying in part motion for summary judgment)

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