INDEX

SELECTED STATUTES

2014 LEGISLATIVE SESSION

HB 32 Amends Section 11-21-15 to revise the appointment of Freeholders in Partition Procedures, Effective July 1, 2014.

HB 487 Provides for centrally filing tax liens with the Department of Revenue, that are in favor of the Department of Revenue, to be enforced by the Department of Revenue, immediately filing prior tax liens with the Department of Revenue and the filing of unpaid tax liens in the County of residence of the taxpayer or the County where the taxpayer owns property. The tax liens will constitute a Judgment that can be re-enrolled. Effective January 1, 2015

HB 696 Amends Section 89-5-24 to clarify the required identifying information that must be included on the first page of a recorded instrument pertaining to real property and for related purposes. Effective July 1, 2014.

HB 1165 Amends Section 27-33-75 and 27-33-67 to provide that any person having a service connected total disability with an honorable discharge and the unremarried surviving spouse of such a veteran shall be exempt from Advalorem taxes up to $7500. of assessed value on homestead property. Effective January 1, 2015.

SB 2394 Amends Section 29-1-75 to allow certain nonbanking corporations to purchase lands sold or forfeited to the state for delinquent taxes. The bill also caps the amount of tax-forfeited land a corporation can purchase at 160 acres per year. Effective July 1, 2014 and shall stand repealed on July 1, 2016.

SB 2511 Provides for name reservation across all business entity types for a period of six months, after which the business entity may renew the reservation within 30 days of expiration and upon expiration, anyone may reserve the name. Effective July 1, 2014.

SB 2559 Provides that a Real Estate Broker may file a lien with the Chancery Clerk upon Commercial real estate for the amount due under a written agreement. Effective July 1, 2014.

SB 2622 Provides for the filing of construction liens by all Contractors, Sub-Contractors, Materialmen, Architects, Engineers and Surveyors and the method for obtaining priority for deeds and deeds of trust. Effective April 11, 2014.

SB 2727 Provides for a Mississippi Uniform Trust Code and repeals all prior Trust Statutes. Effective July 1, 2014.

SELECTED CASES

ADVERSE POSSESSION
Hoover v. Callen, 134 So.3d 828 (2014)

CONTRACTS
Prestenbach v. Collins, 2012-CA-01441-COA (2013)

COVENANTS
Misita v. Conn, 138 So.3d 138 (2014)

DEEDS
Morrow v. Morrow, 129 So.3d 185 (2013)

DIVISION OF MARITAL ESTATE
Brown v. Brown, 2012-CA-00672-COA (2013)

EJECTMENT
Residential Advantage Dev., LLC v. Ross, 136 So.3d 476 (2014)

ENCROACHMENT
Rose Nulman Park Foundation v. Four Twenty Corp., et al. 1014 WL 2640018 (R.I. 2014)

HOMESTEAD
Noone v. Noone, 127 So.3d 193 (2013)

LIMITATION OF ACTIONS
Hubbard v. BancorpSouth Bank, 135 So.3d 882 (2014)
Lott v. Saulters, 133 So.3d 794 (2014)

TAX LIENS
Bedrock Financial Corp. V. First American Title Co., 2014 WL 1600452 (E.D. Cal.2014)

WILLS, TRUSTS AND ESTATES
In Re Jones, 138 So.3d 205 (2014)

ZONING
Speyerer v. Bd of Supervisors of Madison Cnty., Miss., 139 So.3d 771 (2014)

SELECTED STATUTES

HB 32 - When appointing masters in a partition suit, Section 11-21-15 was amended to add the words "not more than" so that it now states that the judgment shall appoint "not more than three discreet freeholders" rather than "three discreet freeholders"-------- to partition the property. Effective from and after July 1, 2014.

HB 487 - MISSISSIPPI UNIFORM STATE TAX LIEN REGISTRATION ACT. This statute provides that when a notice of tax lien is enrolled by the Department of Revenue in the tax lien registry of the state, the tax lien is perfected and shall be attached to all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi. Said lien shall be valid against all parties from the time of its enrollment in the tax lien registry and shall have the same effect as any enrolled judgment of a court of record.

The enrollment shall serve a authority for the issuance of writs of execution, attachment, garnishment and etc. and shall also serve as authority for the commissioner to issue warrants for the collection of the tax lien, directing and authorizing a special agent to seize and sell the property of the debtor anywhere in the state and not just in a specific county. The notice of tax lien shall be good for a period of seven (7) years, however, there shall be no limit on the number of times

that the department may reenroll the notice of tax lien.

A release filed in the tax lien registry shall constitute a release of the tax lien within the department, the tax lien registry, and/or the county in which the tax lien was previously enrolled, and any inconsistencies found between the tax lien registry and the judgment roll of any county shall be superseded by the tax lien registry. The tax lien registry shall be available in an electronic form through the internet and in a printed form.

All tax liens currently enrolled in the judgment rolls of the various counties as of the effective date of this act which were enrolled within the past seven (7) years and have not been satisfied shall be enrolled in the tax lien registry on the effective date of the act and shall be a lien on the property of the debtor for a period of seven (7) years from the date of the enrollment in the tax lien registry. Effective from and after January 1, 2015.

HB 696 - amends Section 89-5-24, Mississippi Code of 1972, DOCUMENT FORMATTING STANDARDS, to require that, in addition to all previous requirements, all documents presented to the Chancery Clerk for recording must now also contain on the first page thereof, the name, mailing address and telephone number of every party to the instrument. Effective from and after July 1, 2014.

HB 1165 AMENDS Section 23-33-67 Mississippi Code of 1972, AGE AND DISABILITY EXEMPTIONS, to provide that any person that is totally disabled or the unremarried surviving spouse of any veteran having a service connected total disability with an honorable discharge shall be exempt from advalorem taxes up to $7,500. of assessed value on homestead property. Effective from and after January 1, 2014.

SB 2394 Amends Section 29-1-75, Mississippi Code of 1972, WHO MAY PURCHASE, to allow certain nonbanking corporations to purchase lands sold or forfeited to the state for the nonpayment of delinquent taxes. The bill also caps the amount of tax forfeited land a corporation can purchase at 160 acres per year. Effective from and after July 1, 2014 and shall stand repealed on July 1, 2016.

SB 2511 Amends various Sections in the Mississippi Code of 1972, to provide for name reservations for a period of 180 days, which may be renewed for one (1) additional 180 day period and also to conform the fee sections for Business Corporations, Nonprofit Corporations, Limited Partnerships, and Limited Liability Companies. Effective from and after July 1, 2014.

SB 2559 Commercial Real Estate Broker Lien Act, provides that a licensed real

estate broker shall have a lien upon commercial real estate in the amount the broker is due under a written agreement for broker services signed by the owner or the owners authorized agent. The lien shall take effect only when the lien claimant files a timely notice of the lien in the office of the Chancery Clerk in the county in which the commercial real estate is located. A lien is timely filed if it is filed after the performance of services and before the conveyance or transfer of the commercial real estate, and shall be valid for a period of one (1) year from the date of filing, and if it is to be paid in installments it can be renewed from year to year until paid. The notice of lien must be mailed to the owner by certified mail and must include the information as set forth in the statute. Any suit to enforce the lien must be brought within one (1) year of the date of filing and a lender shall not be made a party to any suit to enforce a lien unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien. Any broker that falsely and maliciously files a lien shall be liable for double damages. Effective from and after July 1, 2014 and shall stand repealed on July 1, 2017.

SB 2622 provides for the filing of Construction Liens by all Contractors, Sub-Contractors, Materialmen, Architects, Engineers and Surveyors and the method for obtaining priority for deeds and deeds of trust.

SECTION 1, 85-7-401 Definitions

SECTION 2, 85-7-403 Generally, anyone that is LICENSED and furnishes labor, materials or services has a lien, but no lien shall exist in favor of anyone that is UNLICENSED.

SECTION 3, 85-7-405 To perfect a lien it must be filed in the office of the Chancery Clerk within 90 days of the claimant's last work performed and must contain a statement regarding its expiration and that the owner has the right to contest the lien and that it will be void 180 days from the date of filing if an action to enforce is not filed within that time. If the lien claimant is not the contractor he must send notice to the contractor or the contractor's agent. Anyone filing an enforcement action must also file a lis pendens notice with a copy to the owner and contractor. The lien may be amended at any time.

Construction Liens have priority over anything filed after the filing of the lien, however, all encumbrances (deeds of trust) filed before the filing of the construction lien shall have priority regardless of when labor, service or material was furnished and said priority shall extend to amendment and restatements of the lien (deed of trust) without regard to actual knowledge of a

construction lien. Enforcement of a construction lien shall not affect the prior encumbrance (deed of trust) and foreclosure of the prior encumbrance (deed of trust) shall extinguish subsequent construction liens, if the lender obtains an affidavit from the owner regarding payment of contractors as provided in Sec. 85-7-413.

If a deed of trust is filed prior to any construction lien and the lender obtains a sworn affidavit from the owner that no work has been done or that the contractors have been paid in full, the deed of trust and all future advances will have priority over all construction liens.

SECTION 4, 85-7-407 Upon request of the owner, the contractor must furnish the owner a complete list of sub contractors. If he refuses, he forfeits his right to a lien.

A sub contractor must give the owner notice of the amount due him within 30 days of his providing labor, services or material and if the contractor fails or refuses to pay a sub contractor, he shall forfeit his right to a lien and shall be liable for three (3) times the amount of the lien.

The provisions of SECTION 4 do not apply to single family residential.

SECTION 5, 85-7-409 As to single family residential, payment to a contractor for the work of a sub contractor shall be an absolute defense to the extent of payment and only to the extent that the owner has not received a pre-lien notice, which must be furnished to the owner by the sub contractor at least ten (10) days before filing a claim of lien.

SECTION 6, 85-7-411 When an improvement is erected under a contract with a lessee, the lien shall attach to the improvement and to the unexpired term of the lease. Before the enforcement of any such lien, the owner has the right to pay and discharge the lien.

SECTION 7, 85-7-413 Payment made in reliance of a lien waiver by the contractor, when conveying to a bona fide purchaser or securing funds in a loan transaction shall render the lien specified in Sec. 85-7-403(1) dissolved and unenforceable.

SECTION 8, 85-7-415 Allows the owner or contractor to discharge a lien by filing a bond, approved by the Chancery Clerk, for 110% of the lien.

SECTION 9, 85-7-417 Services performed by a member of a partnership, corporation or other entity shall be the same as if the partnership, corporation or other entity had performed the service.

SECTION 10, 85-7-419 A claim of lien may not be waived in advance of furnishing labor, materials or services. A claimant that is paid after filing an affidavit of non payment shall upon request execute an affidavit that payment has been received and the lien shall be deemed void, however a lien claimant can subordinate a future lien. If a lien claimant has not been paid within 60 days after giving a lien waiver, he may file an affidavit of nonpayment.

SECTION 11, 87-5-421 Failure to commence an action within 180 days after the date of filing the lien shall render the lien unenforceable. Also, failure to include the statutory boilerplate language on the face of the lien form that "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT

FILED IN THAT TIME PERIOD" shall invalidate the lien and prevent it from being filed and no release or voiding of liens shall be required. Whenever a lien is satisfied, the holder shall file a cancellation.

SECTION 12, 85-7-423 The owner or contractor can contest a lien by filing a notice of contest and if no payment action is taken the lien shall expire 90 days after filing the notice of contest or 180 days from filing of the lien, whichever comes first.

SECTION 13, 85-7-425 Time is computed according to Sec. 1-3-67.

SECTION 14, 85-7-427 Judgments establishing the lien may be enforced by special writ of execution as set forth in Sec 85-7-153.

SECTION 15, 85-7-429 Anyone that files a false lien shall be liable for three (3) times the amount claimed.

SECTION 16, 85-7-431 Where a contractor gives a payment bond to sub contractors and material suppliers, the payment bond shall be in substitution for the liens provided for sub contractors and material suppliers.

SECTION 17, 85-7-433 Sample forms as follows:

INTERIM WAIVER AND RELEASE UPON PAYMENT - This waiver and release does not release liens on retained amounts.

WAIVER AND RELEASE UPON FINAL PAYMENT

AFFIDAVIT OF NONPAYMENT

NOTICE OF CONTEST OF LIEN

SECTION 18, 85-7-131 Provides for liens that pertain to oil and gas wells, water wells and railroad rights of way only.

SECTION 19, 85-7-133 The Chancery Clerk shall provide a book for filing the liens set forth in Sec. 85-7-131.

SECTION 20, 85-7-141 Must file suit within twelve (12) months to enforce lien and not after.

SECTION 21, 85-7-143 All interested parties shall be made parties to the suit.

SECTION 22, 85-7-145 The Defendant shall be summoned as in other actions at law.

SECTION 23, 85-7-147 Defendants may make any defense they have against the demand of the Plaintiff.

SECTION 24, Repeals several of the old construction lien statutes.

SECTION 25, Section 1 thru 17 shall be codified as a separate Article within Title 85, Chapter 7, Mississippi Code of 1972.

SECTION 26, Act takes effect from and after passage. (Signed by Governor April 11, 2014)

SB 2727 Provides for a Mississippi Uniform Trust Code and repeals all prior Trust Statutes. Effective July 1, 2014.

Article 1 sets forth the General Provisions and Definitions and subject to certain limitations, the Settlor is free to draft terms which deviate from the provisions set forth in the Mississippi Uniform Trust Code. It also allows for nonjudicial resolution of disputes as well as judicial adjudication and extends to trusts the Mississippi rules for

construction of wills.

Article 2 address certain issues involving judicial proceedings.

Article 3 provides for the representation of beneficiaries and other interested parties in the settlement of disputes whether judicially or nonjudicially.

Article 4 sets forth the requirements for creating, modifying or terminating trusts which may be charitable, noncharitable and honorary. Noncharitable trusts are the ones we are most familiar with, while charitable trusts are created to benefit the public at large and honorary trusts are created for a specific purpose such as the care of a pet.

As was the case before, no trust involving real property can be created except by a written instrument, signed by the settlor or by his last will in writing. The written trust may be acknowledged and filed of record with the Clerk of the Chancery Court where the property is located and shall serve as constructive notice of the existence and terms of the trust from and after filing.

In lieu of filing the trust instrument, a memorandum of trust signed by the settlor, trustee, or successor trustee and acknowledged or proved as other writings, which memorandum shall contain the following information.

a. The name of the trust;

b. The street and mailing address of the office and the name and street and mailing address and telephone number of the trustee;

c. The name and street and mailing address and telephone number of the settlor

of the trust;

d. A legally sufficient description of all interests in real property owned by or conveyed to the trust;

e. The anticipated date of termination of the trust or the event upon which the trust will be terminated; and

f. The general powers granted to the trustee.

The memorandum of trust may be amended in accordance with the terms of the act.

Article 5 is reserved for Creditor's Claims; Spendthrift and Discretionary Trust and was not adopted at this time.

Article 6 deals with Revocable Trusts and the capacity to create, amend, revoke or add property to a revocable trust or to direct the actions of a trustee which is the same as the capacity to execute a will. A trust is presumed revocable unless its terms provide otherwise.

Article 7 contains a number of default rules for the office of trustee, such as rules for the aceptance of the office of trustee and providing for a trustee's bond. It also covers the role and liability of co-trustees and the conpensation and reimbursement of expenses of the trustee or co-trustee.

Article 8 sets forth the duties and powers of a trusteee and the trustee's duty of loyalty to the beneficiaries.

Article 9 is the Uniform Prudent Investor Act which was adopted by Mississippi in 2006 and incorporated in this act as Article 9.

Article 10 sets forth the liability of trustees and rights of persons dealing with trustees, including remedies for breach of trust and how damages are determined as well as the statute of limitations for bringing actions against a trustee.

Article 11 includes miscellaneous provisions regarding the uniformity of the application and construction of the trust code, electronic records, signatures and severability of provisions. The Act applies to all trusts heretofore or hereafter created.

Article 12 sets forth the role, responsibilities, and powers of trust advisors and trust protectors and states that they are considered a fiduciary with respect to each power granted or reserved to another fiduciary. It also provides for the repeal of all existing trust statutes.

SELECTED CASES

ADVERSE POSSESSION-Hoover v. Callen, 134 So.3d 828 (2014)

George Callen and Tim Hoover owned adjacent properties and Hoover's brother Mayo occupied Hoovers property and according to Callen asked permission to install a field line on part of Callen's property and Callen agreed if he would repair or remove it if any problems arose. Soon thereafter Mayo died and Hoover moved onto the property and asked Callen for permission to store some of his equipment on the portion of Callen's property occupied by the field line. The property started having problems and, without consulting Hoover, Callen dug up the field line on his property. Because of the increased expense of installing a new system, Hoover filed suit against Callen claiming Adverse posession or in the alternative, an easement by necessity.

The Court of Appeals held that Hoover did not adversely possess the disputed property because Callen granted him permission and that the easement by necessity was properly denied because the field line did not exist at the time the land was severed from a common owner.

CONTRACTS-Prestenbach v. Collins, 2012-CA-01441-COA (2013)

Gerald Collins owned 200 acres of farmland and Garrett Prestenbach wanted to buy 150 acres, if he could obtain a loan through USDA. To enable Prestenbach to apply for a USDA loan, Collins gave Prestenback an option that was irrevocable for the first three months and after that, terminable by collins upon ten days notice. Prestenbach's

loan was approved, subject to the availability of funds. Meanwhile Collins continued to market the property and he did find a buyer that offered cash for the entire 200 acres. Collins then gave Prestenbach notice to terminate the option and sell the land to the new buyer at the end of the initial three month period. In Collins view, Prestenbach had not validly exerised the option because he failed to obtain a loan within the time allowed. But Prestenbach alleges that he was not required to have the money to purchase during the option period, he just had to give notice that he was willing to purchase the property, which he did. In Jan. 2012, Collins sued Prestenbach to confirm and quiet his title and in Feb. 2012 Prestenbach counterclaimed seeking specific performance. Summary judgment was entered in favor of Collins and Prestenbach appealed. The Court of Appeals held that Prestenbach's option was contingent on the USDA actually approving his loan and loaning the money to him, that he had not validly exercised the option before it expired and that he was unable to show that he was ready, willing and able to go thrrough with the purchase because he had not received his loan money and therefore the judgment of the Marion County Chancery Court was affirmed.

COVENANTS- Misita v. Conn, 138 So.3d 138 (2014)

Roy and Mitzi Conn sued their adjoining landowner, Joel Mista, who had placed a sign on his land. The Conn's sought to enforce a deed restriction that prohibited Mista from erecting any "structure" on three acres of his land. The chancery court ruled in favor

of the conns and ordered the removal of the sign and on appeal the Court of Appeals affirmed the conns authority to enforce the covenant, but reversed the court's determination that the "sign" was a "structure" and the Conns appealed.

The Supreme Court held that because the Conns purchased the dominant land from the previous landowner with notice of the restrictive covenant and the covenant "touched and concerned" the land by imposing a burden on the use and enjoyment of the land, the Conns possessed an enforceable restrictive covenant and that because the sign was composed of parts purposely joined together, it was a "structure". Therefore, the Supreme court reversed the Court of Appeals and affirmed the judgment of the Adams County Chancery Court.

DEEDS-Morrow v. Morrow, 129 So.3d 185 (2013)

(deed 1) In 1993 Gocher and Reba Morrow conveyed property to one of their sons, Phillip, without reservation.

(Deed 2)By deed executed Mar. 23, 1996, **Ack. Mar. 23, 1996**, recorded Apr. 23, 1996, the Morrows reconveyed the property to Phillip, reserving a life estate.

(deed3) by deed dated Apr. 22, 1996, **Ack. Apr. 22, 1996**, recorded Apr. 22, 1996 Phillip conveyed the property back to the Morrows.

The Morrows died intestate and Phillip filed an action against his brothers to quiet and confirm his title to the property. Phillip testified that he did not know which deed was executed first, but that it was his intent to deed the property to his parents in order for

them to reserve a life estate and reconvey it to him and that he would not have deeded the property back to the Morrows if they were not going to reconvey it to him, The Itawamba County Chancery Court, relying on Sec. 89-5-13 found that the dates in the Acknowledgments were controlling and that the property vested in the Morrows at the time of their deaths therefore passing title by intestate succession in equal shares to their three sons. The Court of Appeals affirmed and Phillip appealed.

The Supreme court held that the Chancery Court erred in relying on Section 89-5-13 without adressing Phillip's uncontradicted testimony of the intent of the parties or considering when the deeds were delivered or accepted, therefore, the Supreme Court reversed the judgment of the Court of Appeals.

DIVISION OF MARITAL ESTATE-Brown v. Brown,, 2012-CA-00672-COA (2013)

Kim and Scott Brown were married. Scott left home and Kim filed a petition for child custody and separate maintenance after which Scott filed for divorce on the grounds of habitual cruel and inhuman treatment or, in the alternative, irreconcilable differences. Kim counterclaimed for divorce on the grounds of desertion and habitual cruel and inhuman treatment. The Chancellor dismissed each of the claims of habitual cruel and inhuman treatment. Although Kim testified that she repeatedly asked Scott to resume the marriage, her actions proved differently, so the chancellor did not award Kim separate maintenance. The Chancellor then denied a motion for a new trial and contempt and so Kim appealed. The Court of appeals stated that 1) the Chancellor's

decision was supported by substantial credible evidence. 2) Kim was not entitled to separate maintenance because she contributed to the separation of the parties. 3) Although the Chancellor has the authority to divide a marital estate after a divorce, he does not have the authority to divide the marital estate where only separate maintenance has been granted, and 4) the Chancellor was well within her eiscretion to deny Kim's motion for contempt. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Chancery Court.

EJECTMENT-Residential Advantage Dev.,LLC v. Ross, 136 So.3d 476 (2014)

Residential was issued a forfeited tax patent covering Lot 21, Block F of Beverly Heights, Part 2, Hinds County, Mississippi. Residential constructed a residence on an empty lot that they believed to be Lot 21, but was in fact Lot 20 which belonged to the Ross family. The error was not discovered until the residence was completed and a survey was done. Following the discovery, Residential filed suit requesting the Chancery Court to impose a constructive trust on Lot 20 and compel the Ross family to sell Lot 20 to them for the unimproved value of the lot. The Ross family answered and counterclaimed for injunctive relief in the form of a permanent injunction for Residential to remove the residence from lot 20. The Chancery Court granted the injunctive relief and ordered Residential to remove or demolish the house built on the Ross family's lot within ninety days. Residential filed a motion to alter or amend the judgment, which the Chancery Court denied. Residential Appealed.

Stating that the Chancery Court did not find residential's ejectment argument persuasive and had descretion whether or not to grant equitable relief. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

ENCROACHMENT-Rose Nulman Park Foundation v. Four Twenty Corp., et al. 1014 WL 2640018 (R.I. 2014)

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ENCROACHMENT-Rose Nulman Park Foundation v. Four Twenty Corp., et al.,

HOUSINGWIRE

Home

Court orders developer to tear down $1.8M home

Trey Garrison
June 18, 2014

Any man who works with tools will tell you: Measure twice, cut once.

The same idea applies to land surveys when you're building a $1.8 million home.

You may want to double and even triple check your land survey, in fact, because building in the wrong spot is not on protected parkland.

> A developer who mistakenly built a $1.8 million waterfront house on parkland has been ordered to remove it.
>
> The Rhode Island Supreme Court found that the unoccupied home in Narragansett was built entirely on land owned by the Rose Nulman Park Foundation, and therefore must be removed.
>
> The developer, Four Twenty Corp., began building the home in 2009, but it didn't discover the error until 2011 when it tried to sell the house and the prospective buyers got a survey. Robert Lamoureux, who owns the company, then contacted one of the park's trustees to try to work something out, but she told him the land was not for sale.
>
> The foundation was set up to preserve the property as a park in perpetuity. A 2008 agreement among the family members says that if the trustees allow the land to be used as anything other than a public park, they must pay $1.5 million to New York Presbyterian Hospital.
>
> The developer argued it should not be penalized for an innocent surveying mistake. The court said it was sympathetic, but it said the park's property rights outweighed that. It also said it was in the public's interest to keep the land as a park.

AP

The Big Story

Court: $1.8M house built on park must be removed

By MICHELLE R. SMITH
— Jun. 17, 2014 2:39 PM EDT

This June 16, 2014 photo shows $1.8 million waterfront house that a developer mistakenly built on park land in Narragansett, R.I., and which the Rhode Island Supreme Court has ordered it be removed. Construction began in 2009, but the developer didn't discover the error until 2011 when attempting to sell it. A foundation had been set up to preserve the property as a park in perpetuity, and the developer was told the land was not for sale. (AP Photo/WJAR-TV)

PROVIDENCE, R.I. (AP) — A developer who mistakenly built a $1.8 million waterfront house on parkland has been ordered to remove it.

The Rhode Island Supreme Court found that the unoccupied home in Narragansett was built entirely on land owned by the Rose Nulman Park Foundation, and therefore must be removed.

The developer, Four Twenty Corp., began building the home in 2009, but it didn't discover the error until 2011 when it tried to sell the house and the prospective buyers got a survey. Robert Lamoureux, who owns the company, then contacted one of the park's trustees to try to work something out, but she told him the land was not for sale, according to Friday's opinion.

The foundation was set up to preserve the property as a park in perpetuity. A 2008 agreement among the family members says that if the trustees allow the land to be used as anything other than a public park, they must pay $1.5 million to New York Presbyterian Hospital.

The developer argued it should not be penalized for an innocent surveying mistake. The court said it was sympathetic, but it said the park's property rights outweighed that. It also said it was in the public's interest to keep the land as a park.

"Any attempt to build on even a portion of the property would constitute an irreparable injury, not only to plaintiff but to the public," it wrote.

Messages left with the developer's lawyer were not immediately returned.

A judge will decide how much time the developer has to remove the house.

A lawyer for the foundation, Mark Freel, says the developer has secured most of the permits he needs to move it to the neighboring land, but that the fate of one critical permit is still up in the air. The timing of that could affect whether the house has to be torn down.

"My client has wanted for a long time for the house to be removed," he said. "My client's very clear and firm position is that it's time for the house to go."

Tags

North America, United States, Rhode Island, Oddities

Comments

HOMESTEAD-Noone v. Noone, 127 So.3d 794 (2014)

Elise and Frank Noone were married until July, 2011 when Elise filed for divorce which was denied by the Chancellor, after which Elise sought a declaratory judgment to partition 67 acres that she owned jointly with Frank. Elise and Frank had earlier claimed homestead exemption. Elise filed a motion for summary judgment arguing that section 11-21-1 only applied to the $75,000. that is exempt from execution by creditors, and since the property was worth $600,000. a Chancellor has the authority to partition $525,000. worth of the property, which is the value of the property that is not exempt from execution by creditors. The Chancellor denied Elise's motion and ruled that the Miss. Code Ann. Prohibits partition of homestead property by chancery decree. Elise appealed.

The Supreme Court held that a property's homestead value is only relevant relating to a creditor's claim on the homestead property; therefore, Miss. Code Ann. Section 11-21-1(2) should be interpreted according to its plain language, which allows for partition of the entire homestead property by written agreement only and not by chancery decree. Judgment of the Copiah County Chancery Court was affirmed.

LIMITATION OF ACTIONS-Hubbrd v. BancorpSouth Bank, 135 So.3d 882 (2014)

Brent and Amy Hubbard obtained a home loan from Trustmark National Bank secured with a deed of trust on their residence. Later they got a second loan from BancorpSouth

secured by a second deed of trust. The Hubbards defaulted on the First d/t, Trustmark foreclosed and sold the property. The Hubards then defaulted on the second d/t and twenty-one months after the Trustmark foreclosure, BancorpSouth sued the Hubbards for $42,110.09 under the note. The Hubbards answered and aleged the note was barred under the one year statute in Section 15-1-23, Miss. Code Ann. After a hearing the Circuit Court found Section 15-1-23 inapplicable and ruled instead that the three year statute in Section 15-1-49 was controlling and the Hubbards Appealed and the Supreme Court held that neither statute was applicable, but that the six year statute in Section 75-3-118 was controlling, and that the error of the Circuit Court of DeSoto County was inconsequential and therefore the Supreme court affirmed the judgment of the DeSoto County Circuit Court.

LIMITATION OF ACTIONS-Lott v. Sanders 133 So.3d 794 (2014)

On June 11, 2001 Frances Saulters conveyed real property toRalph Saulters reserving herself a life estate. Four months later Frances conveyed the same property to Brenda Lott, again reserving herself a life estate. At the time of the second conveyance, Brenda had actual knowledge of Ralph's deed which had not been recorded. Both Brenda and Ralph recorded their deeds the same day and Brenda's deed was filed at 10:25 am, while Ralph's deed was filed at 11:10 am. On January 3, 2012, Ralph files suit to set aside the deed to Brenda and quiet title in him. He also sought actual and punative damages from both Frances and Brenda who allege that the statute of limitations has

run. The Chancellor ruled that since Frances was still alive, the statute of limitations had not run because although a remainderman may maintain an action to remove a cloud on his reversion during the pendency of the life estate, he is under no duty to do so and the ten year limitation period does not run against the remainderman until the termination of the precedent estate. Frances and Brenda appealed and the Supreme Court held that even thought Frances beat Ralph to the courthouse, she takes subject to Ralph's ownership interest since she had actual notice of his deed. That the present action fell under the ten-year limitation despite the allegation of fraud, and since Ralph had only a remainder interest, the statute of limitations was tolled until he obtained a present right of possession. However, Ralph's request for actual and punitive damages do fall under the three-year statute of limitations and are barred as untimely.

TAX LIENS-Bedrock Financial Corp. v. First American Title Co., 2014 WL 1600452 (E.D. Cal. 2014)

Joes and Irma Fuentes owed about $40,000.00 in federal income taxes and the I.R.S. filed a tax lien. The debtors applied for a loan to refinance with Bedrock Financial. First American was hired for both title and escrow services. The title examination showed the I.R.S. lien but it was not excepted in the title report. First American closed the refinance and the I.R.S. lien was not paid at closing. Sometime later, Bedrock Financial sued the I.R.S. claiming its deed of trust had priority and the lower court held that Bedrock had priority up to the amount of the payoff of the prior first deed of trust

which had priority over the I.R.S. lien, based on equitable subrogation. The I.R.S. then sued First American in Federal District Court, claiming that it committed bad-faith waste by distributing the government's money "to other parties in disregard of the Government's interest," and that it converted the money. The I.R.S. moved for summary judgment and the District Court agreed with the I.R.S. and held First American liable for the tax. First American argued that it did not take the government's property. It did not knowingly give the money to the wrong party by paying off other liens, but the court agreed with the I.R.S. that actual knowledge was immaterial, because all the I.R.S. had to show was that First American exercised dominion and control over the plaintiff's property. It said conversion rests neither in the knowledge nor the intent of the defendant, but on the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results.

WILLS, TRUSTS AND ESTATES-In Re Jones, 138 So.3d 205 (2014)

Prior to his marriage, Johnnie Lee Jones and Annie Ruth Brown signed an antenuptial agreement that left his home to his daughter from a previous marriage, Bonnie Lee Dixon. After he married Annie, he executed a will, "revoking all previous wills and/or testaments",leaving Annie a life estate with a a remainder to his sister, and finally to himself and Bonnie with a quitclaim deed that was not signed by Annie. Upon his death, Annie sought to probate the will while Bonnie motioned for declaratory

judgment to establish herself as the rightful owner of the home, presenting both the antenuptal agreement and the quitclaim deed to the court. The Chancellor found the antenuptial agreement was a prior testament that had been revoked by the will and the quitclaim deed was void because Annie did not sign it and therefore, title passed under the will. Bonnie appealed and the Court of Appeals held that the antenuptial agreement was modified by the subsequent will and the quitclaim deed was void for lack of Annie's signature. The Hinds County Chancery Court judgment was affirmed.

ZONING-Speyerer v. Bd. of Supervisors of Madison Cnty., MS, 139 So.3d 771 (2014) The Minnie J. Boseman Family Partnership filed a petition with the Madison County Board of Supervisors asking to rezone and reclassify property owned by the partnership. The Board forwarded the petition to the Madison County Planning and Zoning Commission. After a hearing, the Board approved the petition to rezone the property. The Speyerer's appealed to the Circuit Court which upheld the Board's decision and the Speyerer's then appealed to the Court of Appeals. The Court of Appeals reversed and rendered the judgment of the Circuit Court because the partnership failed to set forth the minimum evidentiary requirements needed to support a rezoning decision, such as showing a change in the character of the neighborhood or public need.