Update: 2020 Court Decisions for Cases in Which TLTA Filed Amicus Letters

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2020 has been a busy year for the title industry, and the same is true for TLTA's Judiciary Committee. As we approach the end of the year, the Committee would like to highlight the 2020 court decisions from cases in which the Committee filed amicus letters.

Teal Trading & Dev., LP v. Champee Springs Ranches Prop. Owners Ass'n, 593 S.W.3d 324 (Tex. Jan. 31, 2020)

In *Teal Trading*, a landowner (Teal Trading) owned two tracts of land, one within the Champee Springs subdivision and burdened with a restrictive easement that limited access across the tracts to a main entrance to the subdivision, and the other outside of the restrictive easement area. However, the replat of the subdivision did not reference the restrictive easement but rather stated that restrictive easements were not allowed unless they were dedicated to the county. Relying on the plat's omission of the restrictive easement and the doctrines of waiver, estoppel by deed, and quasi-estoppel, Teal Trading built a road across the easement. Then the subdivision property owners association filed suit to enforce the restrictive easement, and the case proceeded to the Texas Supreme Court. TLTA filed an amicus letter on May 10, 2019, requesting clarification as to whether non-parties to a plat, such as Teal Trading and the public at large, could rely on statements within a plat. On January 31, 2020, the court issued its opinion, holding that the omission of any reference to the restrictive easement did not preclude its enforcement, but even if it did, Teal was not entitled to rely on the plat under an estoppel by deed theory because it was a stranger to that instrument.

Federal Home Loan Mortgage Corp. v. Zepeda, 601 S.W.3d 763 (Tex. April 24, 2020)

The dispute in *Zepeda* arose in 2011, when a borrower obtained a home equity loan to refinance her 2007 purchase money loan. In 2015, Zepeda notified her lender that the written acknowledgment of fair market value was only signed by her and not the lender, in violation of

Texas Constitution, Art. XVI, § 50(a)(6)(Q)(ix). She properly notified her lender of the defect, yet the lender, and later Freddie Mac, failed to cure it. Then Zepeda sued Freddie Mac in federal court to void the home equity lien and quiet title to the property. Freddie Mac counterclaimed for contractual and equitable subrogation to the 2007 purchase money lien. The federal Fifth Circuit Court of Appeals certified the following question to the Texas Supreme Court: "Is a lender entitled to equitable subrogation, where it failed to correct a curable constitutional defect in the loan documents under § 50 of the Texas Constitution?" TLTA filed an amicus letter on November 12, 2019, emphasizing the long history of equitable subrogation under Texas law and the pivotal role it plays in protecting homestead property and enabling home equity lending in the state. The Texas Supreme Court issued its opinion on April 24, 2020, answering the Fifth Circuit's question with a resounding "Yes."

Chicago Title Ins. Co. v. Cochran Investments, Inc., 602 S.W.3d 895 (Tex. 2020)

In *Cochran*, there was a failure of title due to a bankruptcy involving the prior owners of the property. Prior to that bankruptcy, the property was foreclosed, Cochran Investments purchased at foreclosure, and later sold the property to Michael Ayers and conveyed title via a special warranty deed. Ayers made a claim on his owner's title policy with Chicago, and Chicago sued Cochran for breach of the implied covenant of seisin in the special warranty deed. Cochran responded by asserting that the deed did imply the covenant of seisin based on the limited warranty language in the deed itself. TLTA filed an amicus letter on September 24, 2018, warning that Cochran's theory had the potential to turn special warranty deeds into quitclaims and negatively impact thousands of real estate transactions every year. However, the Supreme Court held that the limited warranty language in the deed (namely, that the grantor was only liable for defects by, through, or under the grantor) was effective to also limit the implied covenant of seisin. Consequently, grantors in a special warranty deed may no longer be liable for failures of title farther back in the chain that are not explicitly caused by the grantor. Stay tuned for possible changes in special warranty deed forms.

Yates Energy Corp. v. Broadway Nat'l Bank as Trustee of Mary Frances Evers Trust, 04-17-00310-CV, 2018 WL 6626605, (Tex. App.—San Antonio Dec. 19, 2018, pet. pending)

In *Yates*, a dispute arose as to the effectiveness of a correction instrument executed after subsequent conveyances of a mineral interest. In 2005, Broadway Bank, as trustee, executed a mineral deed conveying ¼ interest in the trust's mineral interests to John. In 2006, it executed a correction deed to change that interest from the fee to a life estate, but John did not sign that correction deed. In 2012, John conveyed his mineral interests to Yates Energy Corporation, and Yates subsequently assigned those interests to other oil and gas companies. To address concerns over the validity of the 2006 correction deed, Broadway executed an amended correction deed in 2013, which was signed by Broadway and John, but not the current owners of the mineral interests. When John died in 2014, Yates and the other oil and gas companies claimed they owned the fee interests because the correction deeds were invalid, whereas Broadway argued that the remaindermen now held title due to the expiration of John's life estate. On June 9, 2020, TLTA file an amicus letter with the Texas Supreme Court, available here, urging the court to grant review to address the bona fide purchase status of the oil companies in connection with the correction instruments and determine what parties are required to execute material correction instruments after the original

grantee has subsequently conveyed the property. The Texas Supreme Court subsequently granted the petition for review and oral arguments are set for December 2, 2020 via Zoom.

Silver Star Title, L.L.C. v. Marquis Westlake Dev., Inc., 05-19-00562-CV, 2020 WL 4783081, at *1 (Tex. App.—Dallas Aug. 18, 2020, no pet.)

Finally, in *Silver Star Title*, the Fifth Court of Appeals in Dallas considered whether a title company breached its fiduciary and/or contractual duties to its customers by interpleading earnest money and purchase funds when a large commercial sale failed to close at the last moment. While the primary issues in the case centered on interpretation of the purchase agreement, TLTA filed an amicus letter on Oct. 7, 2019, to emphasize that the interpleader remedy is critical to an escrow agent's functions and request that the court uphold the right to interplead funds whenever there is any question as to the rightful owner of those funds. On August 18, 2020, the court of appeals reversed the decision trial court's decision in favor of the contract purchaser and rendered judgment in favor of the title company, implicitly affirming the interpleader action.

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