

An Overview of Slander of Title claims for Lienors of Real Property

By: Charles B. Jimerson, Esq.

Slander of title occurs when one entity or person falsely alleges an ownership interest in the property of another, or when one entity or person disparages the property interest of another. The elements of slander of title claims are:

- (1) Defendant communicated to a third person;
- (2) A statement disparaging plaintiff's title;
- (3) The statement is untrue; and
- (4) Defendant's communication caused plaintiff to suffer actual damages.

Slander of title is also called "title disparagement of property," "slandered goods," "trade libel," and "injurious falsehood". See *Collier County Publishing Co. v. Chapman*, 318 So. 2d 492, 494 (Fla. 2d DCA 1975), *cert. denied*, 333 So. 2d 462 (1976). Though most slander of title actions are based on written, recorded instruments, slander of title may consist of a statement in writing or by word of mouth. In the construction law setting, lienors should be aware that liens that are improper, whether fraudulent or not, can give rise to slander of title claims.

An action for slander of title claim can rise from, among other things:

- placing an improper or fraudulent mechanics' lien on property;
- claiming a lease on property, thereby preventing its lease or sale to another;
- refusing to release a financing agreement concerning realty, which is known to be void;
- forbidding an auction sale of property on the ground that the person offering it has no right to sell it; and most frequently
- the filing or recording of a false instrument purporting to affect the title to property.

The mere bringing of a legal action on a claim relating to land does not constitute slander of title, and a mortgage foreclosure action is not a slander of title. Though a substantively invalid *lis pendens* can constitute a slander of title, generally because a *lis pendens* has no existence separate and apart from the litigation of which it gives notice, it is encompassed within the absolute privilege of judicial proceedings.

Damages arising from slander of title may be compensatory and or punitive. Where the property owner fails to demonstrate special damages, either attorney fees as damages or other damages resulting from the complained of slanderous encumbrance, then an essential element of that cause of action is fatally missing. "Special damages" generally means measurable monetary loss that was directly related to the falsehood's effect on the conduct of third persons and the expenses incurred to counteract the publication. These damages include losses that arise from the inability to sell the property, the decrease in value of the property, and litigation cost in reversing the effects of the slanderous statements or actions. The slanderous action must be the legal cause of the claimed losses.

Attorney's fees may be a proper element of special damages in a slander of title action to compensate for the wrong committed. They are recoverable because part of the pecuniary loss includes the expense of litigation to remove the cloud cast upon the title. In a slander of title case, attorney's fees are available only to the plaintiff, should the plaintiff prevail, because attorney's fees are considered damages sustained in clearing title.

Although actual malice is not necessary to recover compensatory damages in slander of title actions, the plaintiff must prove actual malice in order to recover punitive damages. Actual malice necessary for punitive damages means ill will, bad or evil motive, or such gross indifference to or reckless disregard of the rights of others as will amount to a willful act.

Source reference: Lease, Florida Jurisprudence (Second Edition 2010)

Tags: Slander of title

Practice area: Construction Law; Real Estate litigation