

October Real Estate Update | Lawrence R. Carver, Jr. v. RBS Citizens, N.A.

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On September 27, 2019, the Court of Special Appeals of Maryland issued an opinion reversing a judgment against Security Title Guarantee Corp. of Baltimore. The decision is significant not merely for what the Court held, but for what claims were not raised by the property owners.

In *Lawrence R. Carver, Jr. v. RBS Citizens, N.A.*, Nancy and Lawrence Carver purchased multiple lots in Cecil County, Maryland and encumbered each with separate deeds of trust. Following the subdivision of one lot into two separate parcels – referred to as Property A and Property B by the Court – the Carvers sought to refinance the entire debt as to all parcels. Purportedly intending to obtain a deed of trust against all parcels, RBS obtained a deed of trust only against Property A with only Lawrence Carver, and not Nancy Carver, being identified as the borrower. During the refinance transaction, Security Title acted as RBS's title examiner and issued a lender's policy of title insurance. Thereafter, the Carvers obtained additional loans from another lender, which were secured by deeds of trust executed by both Nancy and Lawrence Carver.

Following a default on the RBS loan, it was recognized that the refinance deed of trust extended only to Property A and not to the other properties. To remedy the error, Security Title unilaterally revised and re-recorded the deed of trust to include all parcels and added Nancy Carver as a borrower.

In response to the re-recording, the Carvers sued both RBS and Security Title alleging misrepresentation, fraud, constructive fraud, and conspiracy. The claims against RBS were settled before trial, but the claims against Security Title proceeded to trial in April and June 2017. The trial court ruled in favor of Security Title on all claims except for constructive fraud, for which the Carvers were awarded \$6,726 in damages. The award in favor of the Carvers was reversed on appeal as the Carvers presented no evidence at trial establishing a confidential relationship with Security Title, a necessary element in their constructive fraud claim.

While the ultimate reversal as to the constructive fraud claim is fairly predictable given black-letter law in Maryland, it is notable that the claims raised by the Carvers – misrepresentation, fraud, constructive fraud, and conspiracy – are personal torts. The more familiar property torts (e.g. slander of title) were not asserted by the Carvers. Some in the title industry may rely upon the Court's decision to vindicate the unilateral action of re-recording a deed of trust under similar circumstances, but one should be cautious as future plaintiffs may press claims in addition to the personal torts raised by the Carvers. As neither the trial court nor the appellate court opined on the potential liability flowing from such unilateral action, careful attention should be given in the future in relying on this case.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the



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spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

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