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The Title Insurance Law Journal



Mechanic's Liens

Indiana Supreme Court Clarifies Construction Lien Rules in Multi-Owner Development Projects

EdgeRock Development, LLC v. C.H. Garmong & Son, Inc., 261 N.E.3d 192 (Ind. 2025)

The Indiana Supreme Court's decision in *EdgeRock Development, LLC v. C.H. Garmong & Son, Inc.* addresses several matters of first impression concerning how construction liens operate in development projects involving multiple property owners. The ruling provides important direction for title insurers, lenders, and real estate professionals dealing with complex development scenarios where contractors seek to secure debts across properties with different owners.

The Development and Duplicate Lien Problem

EdgeRock Development transformed five undeveloped lots into the Trails of Westfield, a mixed-use development in Indiana. EdgeRock retained ownership of two lots while selling two lots to ZPS Westfield, LLC and one lot to a third party. The project required extensive infrastructure work including moving a drain, constructing roads, and installing utilities that benefited all five lots.

When payment disputes arose, contractors C.H. Garmong & Son and Fox Contractors each recorded multiple construction liens covering the same work and same debt amounts against properties with different owners. For example, Garmong recorded one lien against EdgeRock's lots for \$943,042.64 and another lien against ZPS's lots for the identical amount covering identical work. Fox employed the same strategy, creating what the court characterized as "redundant" liens where "contractors were using multiple properties with different owners to secure the same debt." Garmong and Fox asserted they were entitled to foreclose their liens against all of the properties against which the liens were recorded.

The Supreme Court held that "each lien can secure no more than the debt for the improvements to the property attached to the lien." However, contrary to EdgeRock's and ZPS's arguments, the remedy for

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addressing Garmon's and Fox's duplicate liens was not to invalidate the liens altogether, but simply to reduce the liens and allocate them to each affected property.

First Impression: Duplicate Liens Prohibited

Addressing this issue of first impression, the Indiana Supreme Court definitively ruled that contractors cannot assert duplicate liens on properties with different owners for the same work and debt, even where the work benefits a single overarching project. The court based this conclusion on four key principles that title insurers should understand when evaluating construction liens.

First, statutory language ties liens to property ownership, not contracts. Indiana Code § 32-28-3-1(b) requires liens to attach to "the structure or improvement itself" and to "the interest of the owner of the lot or parcel of land" for whose benefit the work was performed. The court rejected arguments that contractual relationships could override ownership boundaries, explaining that while work under a single contract might evidence a common improvement plan, "the contract does not by itself determine whether a joint lien is proper."

Second, the consent requirement prevents cross-property liability. Construction liens require active property owner consent to improvements to their property. The court emphasized that "each property owner must pay their own way, but that means paying only for the improvements they effectively consented to and bargained

for." Allowing duplicate liens would undermine this requirement by forcing property owners to guarantee debts for improvements to other properties they never approved.

Third, liens cannot convert owners into guarantors of others' debts. While construction liens make property owners "involuntary guarantors" of improvement costs, this applies only to "improvements to the property owner's own property, not someone else's property." A lien cannot exist without an underlying debt, and ZPS never agreed to guarantee EdgeRock's debts for improvements on EdgeRock's property. The court drew an analogy to housing developments, noting it would be improper to make one homeowner shoulder costs for improvements to surrounding properties.

Fourth, case law supports property-based rather than contract-based lien scope. The court distinguished cases allowing joint liens on multiple properties, noting those involved single owners of all affected properties where "there was no need to require separate liens."

Lien Reduction Rather Than Invalidation

Rather than voiding the overstated liens entirely, the court reduced them to cover only improvements directly benefiting each property. "[N]o reported case in Indiana has ever held that a lien was void because the vendor overstated the amount owed." The court found the contractors acted in good faith based on an unsettled legal question ("whether the liens tracked the contract or property ownership"), preventing total invalidation.

Project Financing Exception

After confirming construction lien priority is determined by the date work begins, not the date the lien is recorded, the court then clarified the statutory exception giving mortgage liens priority over construction liens when loan proceeds fund the specific project. Under Indiana Code § 32-28-3-5(d), "the mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate."

First Bank Richmond made a \$4.9 million loan to EdgeRock. This loan illustrates the applicable principle. The court granted the bank priority for \$2.14 million used to pay off Garmon's prior construction lien, finding these funds were "for the specific project." However, the bank received junior priority for the remaining funds used to pay off prior investors, which the court characterized as "a mechanism to allow Edgerock to move money from one related LLC to another" rather than project financing.

The trial court's factual findings supported this distinction: the loan application described funds as "non-purchase money collateral," no loan proceeds funded new construction, and the property transfer between related entities involved "no consideration" for "internal company purposes."

Equitable Subrogation Rejected

First Bank also argued for equitable subrogation to assume the priority position of the other debt it paid off.

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The court rejected this claim, finding the loan was not a “traditional refinancing” but rather “a vehicle for the investors to retrieve their capital without paying the contractors that had improved the properties.”

The court emphasized several factors defeating equitable subrogation: the bank knew it was “paying off an existing mechanic’s lien for

an in-trouble project through an unconventional financing arrangement,” the transaction between related entities was not arm’s length, and no funds supported future development.

Title Insurance Implications

This decision creates several important considerations for title insurers:

Lien evaluation in multi-owner developments requires careful analysis of which work

benefits which properties. Title insurers should not simply rely on lien amounts when multiple properties are involved—they should investigate whether claimed amounts reasonably relate to improvements benefiting each specific property.

Project financing analysis requires scrutiny of loan purpose and fund usage. The statutory priority exception for mortgage lien priority applies only to funds actually used

for the specific project, not general refinancing or capital restructuring.

The *EdgeRock* decision provides much-needed clarity for complex development scenarios while reinforcing fundamental principles that construction liens must correlate with property-specific improvements and owner consent.

Mechanic’s Liens

South Dakota Establishes “Hinged Success” Standard for Mechanic’s Lien Attorney Fees

Smith v. WIPI Group, USA, Inc., 23 N.W.3d 168 (S.D. 2025)

The South Dakota Supreme Court’s decision in *Smith v. WIPI Group, USA, Inc.* creates a new legal standard for attorney fee recovery in mechanic’s lien cases where contractor success depends on defeating property owner counterclaims. The court’s “hinged success” analysis represents a matter of first impression that fundamentally expands fee recovery beyond traditional lien prosecution costs.

A fencing contractor sued a property owner to foreclose on its mechanic’s lien. The owner counter-claimed for breach of contract and other claims, seeking many multiples more than the amount of the contractor’s lien.

In an earlier appeal, the Supreme Court found the contractor’s lien was valid, the owner failed to prove damages to offset the lien, and the contractor was entitled to recover the full amount of the lien.

On further proceedings in the trial court, the trial court denied an award of attorney’s fees and costs to the contractor. The court found, among other things, that contractor “should

have recognized” its work was shoddy and should not have sued for more than it was paid.

The contractor appealed, and the South Dakota Supreme Court reversed.

The court established that when a contractor’s successful prosecution of its mechanic’s lien “hinged on it successfully defending against” an owner’s contract-based counterclaims, attorney fees incurred in that defense become recoverable under mechanic’s lien statutes. This standard recognizes that modern lien litigation often requires contractors to prove their work met contract standards to collect payment, making prosecution and defense inseparable.

The decision establishes specific circumstances that trigger expanded fee recovery. The key factors include:

Direct Challenge to Lien Validity: The owner specifically disputed the contractor’s right to recover under the contract, making the defense essential to establishing lien entitlement.

Contract-Based Counterclaims: The counterclaims directly attacked the quality and completeness of the contractor’s

performance, requiring the contractor to prove substantial performance to maintain its lien rights.

Inseparable Legal Issues: The court found that proving entitlement to lien foreclosure required the same evidence and legal arguments needed to defend the counterclaims. Success on one necessarily determined success on the other.

Title Insurance Implications Under Hinged Success

For title insurers, the hinged success standard affects mechanic’s lien risk assessment:

Lien claims in South Dakota now carry the potential for awards of fees and costs a contractor incurs to defend against a counterclaim.

Further, title insurers should evaluate not only the lien amount but also the likelihood that lien prosecution will hinge on defending substantial counterclaims. This requires deeper analysis of the underlying work quality and contract performance issues.

Early intervention becomes more critical when contract-

based counterclaims challenge lien validity. The hinged success standard makes protracted litigation more expensive for unsuccessful owners and lenders.

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Mechanic's Liens

Virginia Court Rules Statutory Lien Venue Requirements Override Private Forum Selection Clauses

Ado Home Services, LLC v. Frykman, 85 Va.App. 55 (Va. App. 2025)

The Virginia Court of Appeals' decision in [*Ado Home Services, LLC v. Frykman*](#) establishes important precedent by ruling that statutory territorial requirements for mechanic's lien enforcement cannot be circumvented by contractual forum selection clauses. This matter of first impression clarifies the jurisdictional landscape for lien enforcement and has important implications for title insurance professionals examining mechanic's liens.

The Jurisdictional Conflict

ADO Home Services filed a mechanic's lien against property located in Alexandria, Virginia, but brought its enforcement action in Loudoun County based on a forum selection clause in the construction contract. The contract specified that "any legal action under this Agreement shall be brought in the courts of Loudoun County, Virginia." However, Virginia Code § 43-22 requires that mechanic's liens "may be enforced in a court of equity by a bill filed in the county or city wherein the building, structure... is situated, or wherein the owner... resides."

The owner successfully demurred to the lien

enforcement action, arguing the statutory venue requirement mandated filing in Alexandria where both the property and owner were located. The trial court sustained the demurrer on jurisdictional grounds, and the Court of Appeals affirmed.

First Impression: Statutory Requirements Override Private Agreements

The Court of Appeals addressed this issue of first impression by analyzing the nature of statutory territorial requirements in the mechanic's lien context. The court distinguished between ordinary territorial jurisdiction, which parties can typically waive, and the specific jurisdictional requirements imposed by Virginia's mechanic's lien statutes.

The court explained that Code § 43-22 "establishes a jurisdictional limitation by prescribing the trial court locality in which lien enforcement actions must be brought, and by necessary implication, prohibiting their institution elsewhere." This interpretation relies on the fundamental principle that mechanic's liens are "purely a creature of the statute" with no common law basis. (Internal

quotations omitted.)

Critically, the court explained that in the mechanic's lien context, "territorial jurisdiction is not merely a venue requirement but a necessary condition for a court to exercise subject-matter jurisdiction over a lien enforcement suit."

The court grounded its decision in public policy considerations, stating that "the public policy expressed in Code § 43-22 overrides any private agreement to litigate in a different forum." This policy rationale reflects the Legislature's intent to protect those who furnish labor and materials by ensuring predictable enforcement procedures tied to property location and owner residence.

The court rejected the contractor's argument that the statute's use of "may" rather than "must" created discretionary authority for filing location. Instead, the court applied the principle that "when the General Assembly has used words of a definite import, we cannot give those words a construction that amounts to holding that the General Assembly meant something other than that which it actually expressed."

Title Insurance

Implications for Lien Enforcement

This decision creates several important considerations for title insurance professionals:

Jurisdictional Due Diligence: When evaluating mechanic's lien claims, title insurers should verify not only the validity of the underlying lien but also whether any enforcement action was properly filed in the correct jurisdiction. Liens enforced in improper venues may be subject to dismissal regardless of their substantive merits.

Coverage Analysis: The decision clarifies that mechanic's lien enforcement follows strict statutory territorial requirements that cannot be modified by contract. This provides greater certainty for title insurers evaluating potential lien exposure, as enforcement actions must follow predictable jurisdictional rules.

Risk Assessment: Title companies can now rely on the principle that lien enforcement actions will be filed where the property is located or where the owner resides, regardless of forum selection clauses in underlying construction contracts. This enhances the predictability of where lien disputes will be litigated.

Conveyances

Georgia Court Clarifies When Security Deed Modifications Constitute Renewals Rather Than Novations

Roswell Properties LLC LTD v. First American Services LLC, ___ S.E.2d ___, 2025 WL 1777700 (Ga. App. 2025)

The Georgia Court of Appeals decision in [*Roswell Properties LLC LTD v. First American Services LLC*](#) provides important

guidance for title insurance professionals dealing with older security deeds that have undergone multiple modifications over extended

periods. The court's analysis of when modifications constitute renewals versus novations has significant implications for determining automatic

reversion dates under Georgia's security deed statute.

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Background

First American Services, LLC, acting as trustee of a trust, sought to cancel a 1989 security deed held by Roswell Properties, LLC, LTD. The trial court granted summary judgment for First American.

The security deed was originally given as part of a \$25,000 loan to Ernest O. Wiggins from Security National Bank with a maturity date of 1990. The deed was later modified numerous times, changing the amount owed and the maturity date. Each modification was recorded, and several modifications were noted on the face of the deed. All of the modifications contained statements that, apart from the changes to the amounts and maturity dates, the security deed remained in effect. The FDIC took over for Security National Bank, and the loan was assigned to Roswell. In the meantime, First American bought Wiggins' property after he died.

In the lawsuit, First American argued the property reverted to Wiggins after the expiration of the maturity date set by the last recorded modification in 2009. First American argued that although the original debt would have triggered a 20-year reversionary rule under a prior statute, the 2009 was a modification governed by a 7 year reversionary period, based on a 2012 maturity date.

The Security Deed Reversion Framework

Georgia's automatic reversion statute, OCGA § 44-14-80, creates a critical timeline for security deed validity. When the 1989 security deed in this case was executed, the statute provided for automatic reversion of title after 20 years from the debt's maturity date. However, in 1994, Georgia reduced this period to seven years, creating a complex analysis for deeds executed before the change and subsequently modified.

The Court of Appeals confirmed a fundamental principle: "The law in effect when a security deed is originally executed governs the instrument and any subsequent renewals." This means the 1989 deed remained subject to the original 20-year reversion period despite later statutory changes, provided the modifications constituted renewals rather than novations.

The Renewal Versus Novation Distinction

The court's analysis centers on a critical legal distinction that title professionals must understand. A renewal extends the original debt under existing terms, while a novation creates an entirely new contract that extinguishes the original obligation.

For novation to occur, four essential elements must be present: "(1) a previous valid obligation, (2) the agreement of all the parties to the new contract, (3) extinguishment of the old contract [and] (4)

the validity of the new one.'" Whether the parties intended a novation is typically reserved to the trier of fact.

The court cited established precedent: "The cancellation of the old security deed and the execution of a new one between the same parties may have the effect of a novation, so as to promote junior liens to superior rank, but a *modification agreement will not have such an effect where the original security deed is not cancelled.*"

Modification Language Controls the Analysis

The decisive factor in this case was the express language of the 2009 modification. The document stated: "Grantor and Lender agree that this Modification continues the effectiveness of the original Security Instrument." Additionally, a "CONTINUATION OF TERMS" clause specified: "Except as specifically amended in this Modification, all terms of the Security Instrument remain in effect."

This language proved fatal to the trial court's novation finding. The Court of Appeals concluded: "Because the modification expressly continued the effectiveness of the original security instrument, rather than canceling it, the trial court erred by concluding that the 2009 modification amounted to a novation."

Thus, the evidence showed that title to the property had not reverted under the security deed. The reversionary period did not expire until

2032. Roswell was entitled to summary judgment. First American was not.

Title Insurance Implications

This decision creates important considerations for title examination practices. When reviewing security deeds with multiple modifications, title professionals should:

First, determine which version of the reversion statute applies. The original execution date of the security deed governs the applicable reversion period, not the dates of subsequent modifications. Deeds executed before 1994 remain subject to the 20-year reversion period for all renewals.

Second, analyze modification language carefully. Express continuation clauses strongly indicate renewal rather than novation. Look for language stating the modification "continues the effectiveness" of the original deed or that existing terms "remain in effect" except as specifically amended.

Third, consider the practical effect on title searches. Because modifications extending maturity dates reset the reversion timeline under the applicable statute, title examiners should trace all recorded modifications to determine the actual reversion date. In this case, the final 2012 maturity date extended the reversion period to November 11, 2032, under the 20-year rule.

Conveyances

Wisconsin Federal Court Clarifies Waterfront Property Rights and Adverse Possession Standards

Thomas v. United States, 2025 WL 1651698 (W.D. Wis. 2025)

The U.S. District Court for the Western District of Wisconsin's

decision in *Thomas v. United States* provides direction for waterfront property

owners seeking to establish rights to government-owned waterbed areas

through adverse possession.

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The case demonstrates the complex interplay between federal and state law when property owners claim rights to submerged lands and highlights due diligence requirements for waterfront real estate transactions.

The Waterfront Property Dispute

Eleven residential property owners along the Mississippi River near La Crosse, Wisconsin, sought to quiet title against the United States for waterbed areas where they maintained docks and piers. The properties were originally part of two larger parcels owned by the Zielkes and the Catholic Diocese of La Crosse, who also owned the adjacent submerged waterbed. The Zielkes and the Catholic Diocese built structures, including a boathouse and a dock, while they owned the properties.

After subdivision into residential parcels, the new owners installed and maintained docks, piers, and shoreline improvements including landscaping, riprap, stairs, and gangplanks.

The dispute arose when the United States purchased submerged waterbed parcels in 2005 and 2006, then later discovered the plaintiffs' structures following receipt of a survey and demanded their removal. The property owners responded by claiming they had acquired rights to the waterbed through adverse possession before the government's purchase.

Adverse Possession Requirements and Pleading Standards

Under the federal Quiet Title Act, adverse possession claims against the United States are only permitted if

plaintiffs acquired title before the government purchased the property. Wisconsin law requires "actual continued occupation" of real property "under claim of title, exclusive of any other right" for 20 years, with the property being "protected by a substantial enclosure" or "usually cultivated or improved."

The court applied heightened pleading standards under the Quiet Title Act, requiring plaintiffs to plead "with particularity" the facts establishing each element of adverse possession. This standard demands precise details about the "who, what, when where, and how" of the claim, similar to Federal Rule 9(b)'s particularity requirements.

Successful Waterbed Claims: The court allowed adverse possession claims for waterbed areas beneath docks to proceed for several plaintiffs who adequately alleged continuous occupation. These plaintiffs satisfied the pleading requirements by alleging their current docks were in the "same location" as historical docks or "mostly within the footprint of" previous structures, even when docks had been replaced during the 20-year period.

Continuous Occupation Analysis: The court clarified that when docks are replaced during the 20-year period, plaintiffs can only acquire title to the overlapping footprint between historical and current structures. Only the historical docks predated, by more than 20 years, the government's acquisition of the lands. The current docs did not. However, this boundary issue goes to the scope of acquired rights rather than the validity of the claims themselves. The fact the current docks did not completely overlap with the historical docs did not

bar the suit from going forward. However, in the final analysis, the plaintiffs would only be able to claim adverse possession to the portions of their docks that overlapped with the historical docks.

Shoreline Adverse Possession Claims

For plaintiffs whose properties did not directly abut the shoreline, the court evaluated claims to adverse possession of shoreline areas between their lot lines and the water's edge. Certain plaintiffs successfully alleged adverse possession by describing tangible structures like stairs, sheds, gangplanks, and riprap that remained for at least 20 years, along with other improvements such as landscaping and erosion control.

The court rejected the government's argument that plaintiffs failed to identify specific locations of shoreline structures, finding that describing the disputed property as "the shore lying between [their] lot line and the water's edge" adequately defined boundaries at the early stages of the litigation. The court also declined to dismiss claims based on arguments that shoreline areas remained mostly undeveloped, noting this presents a fact-intensive inquiry more appropriate for summary judgment.

However, the court dismissed shoreline claims for plaintiffs who failed to establish 20 years of continuous possession or who had easement rights that made their use non-adverse.

Implied Easement Analysis for Waterfront Access

Certain plaintiffs asserted they had implied easement claims, alleging they could not enjoy their property without access to the docks and boathouse.

The court rejected implied easement claims for waterfront access, applying Wisconsin's strict standard that implied easements exist only by "necessity ... so clear and absolute that without the easement the [property owner] cannot enjoy the use of the property granted to him for the purposes to which similar property is customarily devoted."

The court found that while docks and boathouses increase property enjoyment, their loss "would not completely prevent" owners from using waterfront properties for residential and recreational purposes. Notably, the court held that having waterfront property does not change this analysis—access to water via on-site docks and piers is not a "clear and absolute" necessity for property enjoyment.

The case underscores that waterfront property rights involve complex factual and legal issues requiring careful documentation and analysis to protect both property owners and title insurers from disputes with government entities claiming waterbed ownership.

Easements

Federal Circuit Affirms Statute of Limitations Bars Claims Against Government Easement Use

Chinook Landing, LLC v. United States, 2025 WL 1693163 (Fed. Cir. 2025)

The Federal Circuit’s decision in *Chinook Landing, LLC v. United States* demonstrates how recorded easements and continuous government use can trigger statute of limitations periods that bar later challenges to the scope of easement rights. The case provides important guidance on when claims accrue under both the Quiet Title Act and inverse condemnation theories when challenging federal agency use of property.

The Easement and Access Rights Dispute

In 1955, the United States recorded a “Transmission Line Easement and Access Road Easement” granting the government rights to “enter and erect, operate, maintain, repair, rebuild, and patrol one or more electric power transmission lines.” The easement also provided “a permanent easement and right-of-way ... for the purpose of constructing an access road ... to be used in connection with the aforementioned transmission line easement.”

The Bonneville Power Association (BPA)—a federal agency—immediately began exercising these easement rights, constructing transmission lines and building the BPA Road to access them. Significantly, BPA used Reeher Road to reach the easement area from Oregon State Highway 6, crossing through land that would later be subdivided and sold to John Lund in 2004.

The dispute arose when BPA obtained additional easements from neighboring property owners in 2013

for transmission line improvements but failed to reach agreement with Lund. In 2014, Lund sent BPA an email revoking “any formal or implied permission” to enter or cross his property. BPA continued using Reeher Road as its access route to the transmission lines.

Lund sued the BPA under the U.S. Quiet Title Act and inverse condemnation, among other claims. Chinook Landing LLC served as Lund’s personal representative after his passing and took over prosecuting the suit.

The magistrate judge found that “BPA has a reasonable right to use [Reeher Road] to enter the easement area to accomplish the purposes set forth in the [1955] Easement.” The magistrate further found Lund’s claims were barred by the statute of limitations.

Quiet Title Act Statute of Limitations

The Federal Circuit found Lund’s claims were time-barred.

Under the Quiet Title Act, claims are barred unless brought within 12 years of the date on which they accrued. Accrual occurs “on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.”

The Federal Circuit applied two key principles for determining when property owners have constructive notice of government claims. First, “constructive notice of recorded deeds may commence the running of the limitations period.” Second, “the government’s use of the land may also trigger the limitations

period.”

Here, both factors supported finding the claim accrued in 1955. The government properly recorded the easement that year, and BPA immediately began using Reeher Road to access the transmission lines. The court emphasized that BPA “continued to use Reeher Road at least annually since 1955” and “built its BPA Road with its starting point on Reeher Road.”

Since Lund’s QTA claim accrued in 1955, the twelve-year limitation period expired in 1967, long before he filed suit in 2019.

Inverse Condemnation Claim Accrual

For inverse condemnation claims like Lund’s—brought under the Little Tucker Act—the six-year limitation period begins when “all the events which fix the government’s alleged liability have occurred and the plaintiff was or should have been aware of their existence.”

The court applied the principle that “the owner at the time [of the taking] rather than the owner at an earlier or later date, is the one who has the claim and is to receive payment.” (Internal quotations omitted.) This rule prevented Lund from claiming his cause of action accrued when he purchased the property in 2004 or revoked permission in 2014.

The Federal Circuit found that “all the events that fix the government’s alleged liability of using Reeher Road to cross over property currently owned by Mr. Lund started in 1955 when BPA exercised the 1955 easement.” The continuous

and open use of Reeher Road since 1955 meant the original property owners “were or should have been aware of BPA’s use.”

Failed Arguments for Later Accrual

Chinook argued unsuccessfully that the claims did not accrue until 2014 when Lund revoked permission, contending this was when “BPA acted in a way that reflected a belief that it had the right to use the road under the [1955 easement].” The court rejected this argument, noting BPA’s consistent use since 1955 demonstrated its position regarding easement scope.

Chinook also argued the takings claim could not accrue until 2014 because BPA previously used Reeher Road “only with the prior landowner’s express and discretionary consent.” However, the court found this argument failed because “the prior owner from whom Mr. Lund acquired his property was not one of the owners of the property at the time of the government’s alleged violation.” In short, the inverse condemnation claim accrued and expired long before Lund bought his property in 2004.

Key Takeaways

The *Chinook Landing* decision reinforces that recorded easements and continuous government use provide sufficient notice to start limitation periods running against future property owners, and how difficult it can be to challenge long-established government property use patterns under federal limitation statutes.

Easements

Pipeline Easement Maintenance Rights Encompass Subsidence Mitigation Work

Columbia Gas Transmission, LLC v. RDFS, LLC, ___ F.4th ___, 2025 WL 2112924 (4th Cir. 2025)

The Fourth Circuit Court of Appeals recently addressed the scope of pipeline maintenance rights in *Columbia Gas Transmission, LLC v. RDFS, LLC*, establishing important precedent regarding utility companies' authority to conduct extensive mitigation work under general easement language when facing threats to pipeline infrastructure.

Facts and Legal Analysis

Columbia Gas Transmission operates a natural gas pipeline crossing property owned by RDFS, LLC in Wetzel County, West Virginia, under an easement granted in 1969. The easement provides Columbia the right to “operate, maintain, replace, and finally remove” the pipeline “through all that certain tract of land” comprising the parcel.

When a coal mining company announced plans for underground mining beneath the property, Columbia learned the mining would likely cause ground subsidence of up to four feet, potentially damaging its pipeline. Columbia determined it needed to unearth the pipeline and perform significant mitigation work to prevent damage from the anticipated subsidence.

RDFS denied Columbia access to conduct the mitigation work, arguing it exceeded the scope of the easement. Columbia sought judicial relief, requesting both declaratory judgment that its easement permitted the necessary access and injunctive relief granting such access.

The court's analysis focused on interpreting the breadth of maintenance rights under West

Virginia easement law. Under the easement's express terms, Columbia possessed the right to access the entire parcel to “operate, maintain, replace, and finally remove” its pipeline. The court determined this language was “sufficiently broad to include the mitigation work.”

Significantly, the court rejected RDFS's argument that Columbia's maintenance rights should be limited by its prior use patterns. RDFS contended that because the easement did not specify boundaries for Columbia's right-of-way, the scope should be restricted by “extrinsic evidence of Columbia's prior use of the parcel.”

Novel Legal Applications

The Fourth Circuit's decision provides instruction for interpreting maintenance rights in utility easements, particularly regarding proactive measures to prevent infrastructure damage. The court created a framework distinguishing between expansion of easement scope and exercise of existing maintenance authority.

Most significantly, the ruling clarifies that maintenance rights under general pipeline easements encompass preventative work to address external threats. The court held that Columbia's “prior use does not change or diminish the scope of the maintenance right,” establishing that utility companies need not limit themselves to historical usage patterns when exercising maintenance authority.

The decision builds upon West Virginia precedent in *Kell v. Appalachian Power Co.*, which established that power

companies retain broad—albeit not “unlimited”—maintenance rights under general right-of-way easements. The Fourth Circuit extended this principle specifically to pipeline contexts, holding that utility companies may “access land to maintain and repair equipment to the extent necessary for the safe and effective operation of its equipment, in accordance with the original easement.”

The court recognized that maintenance rights must evolve to address circumstances not anticipated when easements were originally granted, particularly where external activities like mining create new risks to pipeline safety.

The ruling also establishes important limitations on maintenance authority. While Columbia possesses broad access rights, the court emphasized these rights are “not unlimited.” The decision requires utility companies to balance maintenance necessity against property owner rights, noting Columbia “must not inflict unnecessary damage to the land nor may its exercise of its rights unreasonably increase the burden placed on the servient tenement.”

Easement Interpretation Framework

The court's analysis provides a framework for interpreting general utility easement language. Rather than requiring specific enumeration of every possible maintenance activity, the decision recognizes that broad maintenance language (“operate, maintain, replace”) encompasses activities reasonably necessary to ensure safe pipeline operation.

The ruling distinguishes between impermissible expansion of easement scope and legitimate exercise of existing rights. Under West Virginia law, easement holders “cannot change the right of way after the location has been established without the consent of the landowner.”

The court's interpretation emphasizes the purpose-driven nature of easement rights. As explained in *Kell*, “the right granted is tempered by the purpose to be served by that right.” This principle allows maintenance activities to evolve with changing circumstances while preventing unlimited expansion of easement authority.

Risk Management Implications

For Pipeline Operators: Negotiate easement language emphasizing broad maintenance authority, including express rights to address threats from external activities. Document the necessity of extensive maintenance work through expert analysis demonstrating safety risks and regulatory compliance requirements.

For Property Owners: Recognize that general maintenance language in utility easements may encompass substantial preventative work beyond routine operations. Consider negotiating specific limitations on the scope of maintenance activities and requirements for advance notice and coordination.

For Mining and Development Companies:

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Coordinate with existing utility easement holders when planning subsurface activities. The decision demonstrates courts will protect pipeline infrastructure even when maintenance work substantially impacts surface property use.

Key Takeaways

The *Columbia Gas* decision

establishes that pipeline maintenance rights under general easement language encompass extensive proactive measures to prevent infrastructure damage from external threats. Courts will interpret maintenance authority broadly when necessary to protect public safety and utility operations.

The ruling reinforces that utility easement rights must

be understood dynamically, allowing necessary maintenance activities even when not specifically anticipated in original easement grants. However, this authority remains subject to reasonableness limitations requiring utility companies to minimize unnecessary property damage.

For the pipeline industry, this decision provides

important precedent supporting comprehensive maintenance programs addressing modern infrastructure threats. The court's recognition that maintenance rights cannot be limited by historical usage patterns enables proactive pipeline safety measures in evolving operational environments.

Easements

“Unequivocal Intent” Standard Defeats Drainage Easement Dedication Claim

Fernaays v. Isle of Wight County, 143 F.4th 550 (4th Cir. 2025)

The Fourth Circuit Court of Appeals recently clarified the stringent requirements for easement dedication in *Fernaays v. Isle of Wight County*, establishing important precedent regarding the interpretation of subdivision documents and the distinction between permission to use versus dedication of ownership in municipal infrastructure contexts.

Facts and Legal Analysis

Brian and Susan Fernaays own property in Brewers Creek Subdivision in Isle of Wight County, Virginia. A 20-foot drainage easement extends across their lot and the adjacent property, containing an underground stormwater pipe running from a street storm drain to a natural ravine. After years of deterioration, sections of the concrete pipe separated, causing substantial erosion and an estimated \$150,000 in repair costs.

The Fernaayses sued the County, claiming it owned the drainage easement through dedication when the subdivision was created in 1989, and therefore had a duty to maintain the infrastructure. They argued the County's failure to maintain the pipe

constituted an unconstitutional taking under both the Virginia Constitution and Fifth Amendment.

The court's analysis centered on Virginia's dedication law requirements. Under common law dedication, a landowner's grant to the public requires two elements: an “offer” consisting of “unequivocal evidence of an intention to dedicate” and “acceptance” by the grantee. As the court explained in *Brown v. Tazewell County Water & Sewerage Authority*, acceptance can occur through express acts like formal resolutions or through “long public use with acts of dominion.”

The Fernaayses relied on two key provisions in the subdivision documents. First, the plat's certification stating Brewers Creek Partnership was “dedicat[ing] all streets, alleys, walks, parks, and other open spaces to public use as noted.” Second, language in the Declaration of Covenants and Restrictions providing that “[e]asements shown on the aforesaid plat for streets, drainage and utilities are for the benefit of the owners of all lots in said plat and may be freely used by the County of Isle of Wight for the benefit of the owners of said lots and their

assigns, as well as the general public.”

Novel Legal Applications

The Fourth Circuit held “Brewers Creek Partnership did not unequivocally dedicate the drainage easement . . . so as to create a duty to maintain the drainage pipe.”

The Fourth Circuit's decision distinguishes between different types of easement language in subdivision documents. The court created a framework for analyzing dedication intent that emphasizes textual specificity and comparative language analysis.

Most significantly, the court distinguished between express dedication language and mere permission to use. While a 5-foot easement abutting State Route 661 was labeled “5' hereby dedicated for road widening,” the drainage easement was simply labeled “20' drainage easement.” This contrast proved dispositive, as the court noted the drainage easement label “indicates by contrast that the drainage easement simply exists” rather than manifesting dedication intent. “The plat thus lacks the necessary evidence of an intent to dedicate the ‘20' drainage

easement' and the pipe within it.”

The ruling also addresses regarding permission versus ownership in subdivision contexts. The Declaration's language that easements “may be freely used by the County” was interpreted not as conveying ownership but as granting permission. As the court explained, “giving an entity permission to use a preexisting easement is not the same as dedicating it to the entity.”

This interpretation was strengthened by additional language preserving the developer's “right to relocate the said easements” upon “resubdivision or rearrangement,” suggesting the property owner retained ownership rather than dedicating an easement to the County.

The decision also clarifies Virginia's statutory dedication framework. Under Virginia Code § 15.1-478 (1989) (current version at § 15.2-2265), plat recordation can automatically effect dedication, but the statute requires manifesting intent to dedicate on the plat itself. The court

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noted Virginia precedent excludes “water and sewer easements” from statutory dedication, including those “for subsurface installation and maintenance.”

Constitutional Taking Analysis

The court’s holding effectively resolved the constitutional taking claims by eliminating the predicate for municipal liability. Without dedication creating County ownership and maintenance duties, no constitutional violation could occur from the County’s refusal to repair private infrastructure.

This creates important precedent for inverse condemnation claims involving municipal infrastructure. Property owners cannot bootstrap dedication claims

into constitutional taking theories without first establishing clear municipal ownership through unequivocal dedication language.

The decision reinforces that constitutional taking analysis in infrastructure contexts depends fundamentally on property rights determination. As the court noted, with effective dedication, public entities become owners “with the obligation to maintain it in the manner necessary to protect the servient estates,” potentially creating liability under both state constitutional and Fifth Amendment theories.

Risk Management Implications

Developers should use explicit dedication language (“hereby dedicated”) when intending to transfer infrastructure ownership to municipalities. Distinguish clearly between

public use permissions and ownership transfers in subdivision documents.

Property owners should carefully review subdivision documents during purchase to understand infrastructure ownership and maintenance responsibilities. The *Fernaayes*’ \$150,000 burden demonstrates the financial consequences of unclear easement language.

Municipalities should avoid accepting maintenance responsibilities through informal arrangements without clear ownership transfer. The County’s disclaimer of ownership proved effective in avoiding liability despite informal usage permissions.

Key Takeaways

The *Fernaays* decision establishes that Virginia courts will apply strict “unequivocal intent” standards in dedication analyses, requiring clear textual

evidence of ownership transfer rather than mere permission to use. The ruling demonstrates how comparative textual analysis can resolve ambiguous dedication claims, with specific dedication language elsewhere in the same document highlighting the absence of such language in disputed provisions.

For property owners in subdivisions with aging infrastructure, this case underscores the importance of understanding actual ownership responsibilities rather than assuming municipal ownership based on informal usage patterns. The court’s analysis suggests property owners bear infrastructure costs absent clear dedication evidence, regardless of practical municipal involvement or public benefit from the infrastructure.

Easements**Prescriptive Easements for Water Drainage: Boundary Specificity Requirements Clarified in New York Case**

Dias v. Town of Ulster, ___ N.Y.S.3d ___, 2025 WL 1900325 (N.Y. App. Div. 2025)

The New York Supreme Court, Appellate Division, Third Department, recently addressed requirements for establishing prescriptive easements for water drainage in *Dias v. Town of Ulster*, emphasizing the necessity of proving reasonably specific boundaries even for stormwater discharge easements.

Facts and Legal Analysis

The Town of Ulster installed a drainage pipe before 1986 to discharge stormwater from nearby street intersections onto property in Kingston, Ulster County. Around 2004, Joao Dias purchased the property onto which the stormwater drained, unaware of the

drainage system. Around 2007, the Town extended the pipe onto Dias’s property without altering the stormwater flow pattern.

After discovering the drainage pipe and observing frequent pooling and spreading of discharged stormwater, Dias constructed a swale in 2021 to control water flow and reduce ponding effects. He then filed claims for trespass, nuisance, and inverse condemnation, seeking monetary damages and permanent injunctive relief. The Town asserted it had acquired a prescriptive easement for water drainage across the property.

The key issue in the case was whether the Town was required to prove the nature of its easement with any

specificity. The court noted that a prescriptive easement “may be acquired for the discharge of water either onto or across” someone else’s property. However, “[s]pecificity of purpose is critical.” The court noted the Town used “onto” and “across” “interchangeably.”

The court’s analysis focused on a fundamental principle in prescriptive easement law: “the right to a prescriptive easement is measured by the extent of the use.” Citing *Auswin Realty Corp. v. Klondike Ventures*, the court emphasized “[t]he extent of the enjoyment measures the extent of the right’ and ‘the prescriptive right is confined to the right as exercised for’ the prescriptive period.”

This principle created a novel challenge for the Town’s water drainage easement claim. The court determined the Town sought “the drainage of water over and across plaintiff’s land,” requiring proof of a “reasonably specific path through which the water historically flowed across plaintiff’s property.”

The Town’s evidence proved insufficient. A highway superintendent testified the discharged water would create visible streams or ponds flowing “around the southern portion of the lot, then the western portion” before reaching the City of Kingston’s pipe system. However, acknowledging the impact of Dias’s 2021

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swale construction, the superintendent conceded he “was unable to recall a defined path where the stormwater would discharge continuously,” stating the flow “wasn’t so defined” and would travel according to property grading.

Similarly, an expert witness engineer testified water from the pipe would “flow into the low area, probably pond, and eventually make its way to the City of Kingston’s culvert system.” He acknowledged there was “never a definite or defined area where the water flowed across the property” until Dias built the swale.

The court rejected the Town’s argument it need not prove the easement’s nature with specificity, stating such argument was “generally belied by its own posttrial submission, which conceded that ‘[t]he concept of fair notice to a

property owner of another’s adverse use underlies the requirement an easement by prescription have determinate boundaries.”

Legal Applications

This decision represents an important development in prescriptive easement law as applied to municipal stormwater management systems. The “proponent of an easement must establish its scope.” The court explicitly held “such principle is applicable in cases involving the discharge of surface water onto or across the property of another.”

The ruling establishes municipalities cannot rely on general evidence of water discharge to establish prescriptive easements. Instead, they must prove specific, continuous pathways meeting traditional boundary requirements, even for naturally flowing stormwater.

This creates a crucial evidentiary standard for water-related prescriptive easements.

The court distinguished between water discharge “onto” versus “across” property, noting the Town sought drainage “over and across” the land, requiring proof of a continuous pathway rather than mere discharge onto the property surface.

Practical Implications and Risk Management For Property Owners:

Property Modifications: Owners can potentially defeat prescriptive easement claims by demonstrating changes in water flow patterns, as Dias’s swale construction highlighted the absence of defined pathways.

Discovery Rights: Property owners should demand specific evidence of continuous pathways rather than general discharge testimony.

Key Takeaways

The *Dias* decision establishes prescriptive easements for water drainage require the same boundary specificity as traditional easements. The “fair notice” principle applies equally to stormwater discharge, requiring proof of reasonably defined pathways over the prescriptive period.

For municipal drainage systems, this ruling necessitates solid evidentiary standards and careful documentation of water flow patterns. The decision suggests courts will not presume easement rights merely because municipalities discharge water onto private property for extended periods.

The case also demonstrates the complex interplay between property rights and public infrastructure needs, particularly where permanent injunctive relief might threaten public safety despite clear trespass or nuisance violations.

Easements

Federal Eminent Domain Power Trumps State Trespass Rules in Border Wall Case

United States v. Bennett, 145 F.4th 618 (5th Cir. 2025)

The Fifth Circuit Court of Appeals recently addressed the intersection of federal eminent domain authority and state property law in [United States v. Bennett](#), establishing important precedent regarding government improvements on easement property and compensation timing in condemnation proceedings.

Facts and Legal Analysis

Mary Bennett owns a cotton farm on the U.S.-Mexico border in Texas. In 1935, Hidalgo County acquired a perpetual right-of-way easement over 4.43 acres of the land for flood control levee construction and maintenance to control the Rio Grande’s

flood waters. The County assigned this easement to the United States in 1937, granting perpetual rights to construct and maintain levees and make related improvements.

In 2008, U.S. Customs and Border Protection constructed a border wall atop the existing levee, claiming the structure served dual purposes of flood control and border protection. Bennett did not object to the wall’s construction between 2008 and the start of litigation in 2020.

When the government initiated condemnation proceedings in 2020 to acquire additional land for wall expansion, Bennett sought compensation for the wall’s

value, arguing the government exceeded its easement scope and therefore she owned the improvements under state trespass law.

The court’s analysis centered on whether state trespass rules could apply when the federal government acts under its constitutional eminent domain power. Under the traditional trespass rule, “fixtures upon land built by a trespasser become part of the estate”—meaning Bennett would own the wall. However, the Fifth Circuit held this rule cannot limit federal eminent domain authority.

The court explained the government “took Bennett’s property for a public purpose, and no state trespass rule can

award ownership of the wall to Bennett because doing so would improperly limit the government’s constitutional power of eminent domain.” The court emphasized the federal eminent domain power “can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in which it must be exercised.” (Internal quotations omitted.)

The parties disputed whether the the government’s purpose in building the wall was for border security or both border security and flood control. Either way, however, the purpose was “public” and thus a proper function of the government’s eminent domain

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powers. As a result, “no state trespass rule can apply.” A state law giving ownership over improvements made as part of the federal government’s power of eminent domain and treating the government as a naked trespasser would unconstitutionally limit the federal government’s power of eminent domain. Doing so would deprive the government of property that it built unless it paid the estate owner more than the amount of just compensation required by federal law.”

Novel Legal Applications

This decision confirmed the supremacy of federal eminent domain power over state property law. The court

created a novel framework distinguishing between private trespass situations and government action for public purposes.

The ruling clarifies that when the federal government acts under eminent domain authority, state trespass rules cannot operate to force compensation for government-built improvements. As the court explained, “a state law giving ownership over improvements made as part of the federal government’s power of eminent domain and treating the government as a naked trespasser would unconstitutionally limit the federal government’s power of eminent domain. Doing so would deprive the government of property that it built unless it paid the estate owner more than the amount of just

compensation required by federal law.”

The decision also addresses compensation timing in unique circumstances. The court held Bennett was not entitled to the wall’s value because “the wall did not exist at the time of the taking in 2008,” applying the principle from *United States v. Dow* that just compensation reflects property value “at the time of the taking.”

In short, Bennet was entitled to recover the value of the land that was taken but not the value of the wall itself.

This creates novel precedent where government construction on easement property followed by later formal condemnation cannot trigger compensation for the improvements, even if the initial construction exceeded easement scope.

Key Takeaways

The *Bennett* decision establishes that federal eminent domain power preempts state trespass rules when the government acts for public purposes. Property owners cannot claim ownership of federal improvements, even when the government potentially exceeds easement scope.

The ruling reinforces the principle that compensation timing depends on when the government enters possession, not when formal condemnation proceedings begin. This protects the federal government from paying for improvements it constructs on property it effectively takes through eminent domain.

Recording and Indexing**Relation-Back Doctrine Fails in Foreclosure Case: Indexing Errors and Notice Requirements Prove Fatal**

U.S. Bank National Association v. 1702 Dean, LLC, ___ N.Y.S.3d ___, 2025 WL 2152755 (N.Y. App. Div. 2025)

The New York Supreme Court, Appellate Division, Second Department, addressed the intersection between the relation-back doctrine and lis pendens indexing requirements in *U.S. Bank National Association v. 1702 Dean, LLC*, establishing important precedent for foreclosure practice and title indexing procedures.

Facts and Legal Analysis

Ghislaine Bertrand executed a \$598,160 note secured by a mortgage on Brooklyn residential property in September 2006. After her death in August 2007, her heirs conveyed the property to Gerald J. Bertrand. U.S. Bank commenced foreclosure in April 2010, but incorrectly described the property’s tax

map designation as Block 1349, Lot 28, when the correct designation was Block 1348, Lot 28. The bank filed multiple notices of pendency with the same incorrect block designation.

Gerald defaulted, and the court granted leave to enter a judgment in July 2013. That same day, Gerald conveyed the premises to 1702 Dean, LLC. Subsequently, the property changed hands again to AG2 Equities, Inc., then back to the LLC in February 2015. The bank did not file a correctly described notice of pendency until April 2017, and in November 2017, the bank filed a notice withdrawing the judgment. The bank and did not add the LLC as a defendant until February 2019—nearly nine years after commencing the action.

Meanwhile, the LLC moved to intervene in the case, and the parties filed cross-motions for summary judgment. The LLC argued the amended complaint was time-barred under the six-year statute of limitations. The bank countered the relation-back doctrine applied, making the amended pleadings timely.

The relation-back doctrine “enables a plaintiff to correct a pleading error—by adding either a new claim or a new party—after the statutory limitations period has expired.” The complaint is deemed timely for purposes of the statute of limitations if “(1) the claim arises out of the same conduct, transaction, or occurrence, (2) the additional party is united in interest with the original party, and (3) the additional party knew or should

have known but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against the additional party as well.”

While the first prong was satisfied, the bank failed on the remaining requirements. The court held Gerald and the LLC were not “united in interest” because “a judgment of foreclosure and sale would not similarly affect Gerald and the LLC, as Gerald no longer has an interest in the premises, while the LLC would have its interest in the premises foreclosed.”

The court also found the third prong—that the LLC knew or should have known—was not satisfied. The LLC did not have actual notice or

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knowledge. The court also found the LLC did not have constructive notice. The court held notices of pendency “indexed against the wrong block and, thus, the wrong property” cannot provide constructive notice. Likewise, recording of the mortgage itself did not impart actual notice

to the LLC of the foreclosure action as required for the relation-back doctrine. The LLC only had constructive notice of the mortgage itself.

Key Takeaways

The *U.S. Bank* decision underscores the critical importance of accurate property descriptions in foreclosure proceedings.

The ruling establishes that relation-back doctrine provides limited protection for lenders seeking to add parties after limitations periods expire. Courts will not presume “united interest” exists between original mortgagors and subsequent purchasers, especially where the original defendant defaulted and lost all property interest.

For the real estate industry, this case reinforces the fundamental principle that constructive notice depends entirely on proper indexing procedures. Even substantial litigation efforts can be defeated by basic clerical errors in property identification.

Escrow Matters

When Escrow Agents Cannot Compel Arbitration: *Fucci v. First American Title Insurance Co.*

Fucci v. First American Title Insurance Co., ___ F.4th ___, 2025 WL 2046028 (10th Cir. 2025)

The Tenth Circuit’s recent decision in *Fucci v. First American Title Insurance Co.* is instructive for title companies and escrow agents regarding their ability to enforce arbitration clauses in purchase agreements where they are not signatories. The court’s analysis clarifies the limited circumstances under which non-signatory escrow agents can compel arbitration and reinforces the importance of separate escrow agreements.

Procedural History

Real estate investors purchased tenant-in-common interests in Florida and Ohio development projects through Purchase and Sale Agreements (PSA) containing arbitration clauses. When the projects failed, investors sued First American Title Insurance Company and its employee Kirsten Parkin, who served as escrow agents, alleging breach of fiduciary duty, aiding and abetting tortious conduct, and other claims. First American moved to compel arbitration based on the PSA arbitration clauses, despite not being signatories to those agreements. The district court denied the motion, and the Tenth Circuit affirmed.

The PSAs contained nearly identical arbitration clauses stating that “any dispute between the parties will be submitted to binding arbitration.” Each PSA designated First American as the escrow agent, but the company did not sign the agreements. The only signatories were the buyers and the seller, Rockwell Debt Free Properties. There was no written escrow agreement. The court examined four theories under which First American claimed it could enforce the arbitration clauses: party status, third-party beneficiary rights, agency relationships, and equitable estoppel. The court rejected each theory, establishing clear limitations on non-signatory escrow agents’ arbitration rights.

Regarding party status, the court emphasized that the plain language of the PSAs made clear the only parties were the buyers and Rockwell. Arbitration was required for “[a]ny dispute between the parties.” The agreements stated they were made “by and between” certain entities, and the signature blocks listed only these parties as signatories. First American’s role as escrow agent did not make it a party to the underlying purchase

agreements. Nor did First American become a party by agreeing to perform escrow services set out in the PSAs.

The court distinguished between the primary purchase agreement and any separate escrow relationship, noting that escrow agents can be held liable for breach of implied escrow agreements or fiduciary duties without becoming parties to the transacting parties’ underlying purchase contract. This distinction proves critical for understanding escrow agents’ legal position in real estate transactions.

On the third-party beneficiary theory, the court applied both Florida and Ohio law, finding that escrow agents are not intended beneficiaries of purchase agreements. Under Florida law, third parties may sue as intended beneficiaries only if the parties express intent to “primarily and directly benefit the third party.” Ohio law similarly requires contracts to be entered into “directly or primarily for the benefit” of the third party.

The court determined that while PSAs benefit escrow agents by providing them with escrow work, this benefit is “merely incidental” to the parties’ intent to complete real estate purchases. The sole

purpose of the PSAs was to facilitate the investors’ property acquisitions, not to benefit First American.

The agency theory also failed because the court found that agents cannot invoke rights their principals lack. Even if First American acted as the seller Rockwell’s agent, it could not compel arbitration when Rockwell itself had lost or waived that right through bankruptcy proceedings.

Finally, the court rejected the equitable estoppel argument, emphasizing that this doctrine cannot expand the scope of arbitration clauses beyond their plain language. The PSA arbitration clauses applied only to disputes “between the parties,” and since First American was not a party, disputes involving the escrow agent fell outside the clause’s scope. In short, non-signatories may not compel arbitration against signatories.

Practical Implications

This decision reinforces several important principles for title companies and escrow agents. First, serving as an escrow agent in a transaction does not automatically make a company a party to the underlying

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Facts and Legal Analysis

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purchase agreement, regardless of how extensively the agreement references the escrow agent's duties.

Second, escrow agents cannot rely on being incidental beneficiaries of purchase agreements to gain arbitration rights. The economic benefit of receiving escrow business does not establish the direct and primary benefit necessary for third-party beneficiary status.

Third, the scope of arbitration clauses matters critically. Clauses limited to disputes “between the parties” exclude non-signatory escrow agents, while broader language covering “any disputes arising from this agreement” might provide different results.

The decision highlights the importance of separate escrow agreements containing their own arbitration provisions if escrow agents want arbitration protection. Such agreements

would create direct contractual relationships with arbitration rights, rather than relying on the uncertain theories examined in this case.

Key Takeaways

Fucci v. First American Title Insurance Company establishes that non-signatory escrow agents face significant hurdles in compelling arbitration under purchase agreements. Escrow agents are not automatically parties

to purchase agreements, are typically only incidental beneficiaries of such agreements, and cannot invoke arbitration clauses limited to disputes between the contracting parties. Title companies and escrow agents should consider separate escrow agreements with their own arbitration provisions if they seek arbitration protection in dispute resolution.

Tax Redemption**Substantial Compliance in Tax Redemption: Divided Montana Supreme Court Expands Property Owner Protection**

Guardian Tax MT, LLC v. Tasey, 572 P.3d 818 (Mt. 2025)

The Montana Supreme Court's decision in [*Guardian Tax MT, LLC v. Tasey*](#) establishes that property owners can be deemed to have complied with statutory redemption deadlines even when payments arrive after the specified date. This provides important protections for property owners but raises questions about the certainty tax deed purchasers have relied upon in Montana's redemption process.

Background

Guardian Tax MT, LLC brought a quiet title action against Jeannette Tasey after acquiring a tax deed to her property. Tasey had failed to pay property taxes beginning in 2017, believing she was exempt pending approval of an elderly/disabled tax credit application.

In 2018, the Yellowstone County Treasurer issued a tax lien against Tasey's property, and a few weeks later, assigned the lien to Guardian. There was no dispute Guardian and the County Treasurer followed all required notice procedures over the next three years.

The statutory redemption

deadline was August 2, 2021. Tasey mailed payment on July 30, 2021. The USPS advised her the anticipated delivery date was July 31, but the County Treasurer did not receive the payment until August 3. The district court granted summary judgment for Guardian Tax, finding the payment untimely. The Montana Supreme Court reversed.

Analysis

The case turned on whether Tasey's good faith attempt to meet the redemption deadline constituted substantial compliance with Montana's tax redemption statutes. Tasey mailed her payment two days before the deadline with postal service indicating July 31 delivery, but the payment arrived one day late due to postal delays beyond her control.

In a 5-2 decision, the court began by explaining a taxpayer's “substantial compliance” with redemption statutes is sufficient, citing *Savoy v. Cascade County Sheriff's Department*. *Savoy* held that redemption statutes should receive liberal construction to permit property owners

who can pay their debts to save their property. The Savoy court emphasized that “rules and statutes dealing with redemption are regarded as remedial in character” and should not allow property forfeiture for “mere falling short of exact compliance with technicalities.” Importantly, the majority explained that taxpayers are only required to do “that which is in their power.”

The majority distinguished between the strict compliance required for parties seeking to *obtain* tax deeds versus the more liberal standard applied to property owners attempting *redemption*. While tax deed purchasers must strictly comply with notice procedures because “the owner risks losing his or her real property for the failure to pay the property taxes,” redemption attempts warrant different treatment under the remedial nature of these statutes.

This distinction proves crucial for understanding Montana's approach to tax deed law. The court noted that strict compliance requirements for tax deed issuance protect property

owners from procedural defects that could result in wrongful property loss. Conversely, substantial compliance for redemption attempts serves the same protective purpose by preventing technical failures from defeating legitimate payment efforts. In both instances, the law aims to protect property owners.

Thus, for the majority, the only question was whether Tasey's conduct satisfied the substantial compliance standard. The court held it did. Her timely mailing with reasonable expectation of pre-deadline delivery demonstrated good faith effort to meet statutory requirements. The postal service's anticipated delivery date gave her reason to believe payment would arrive well before the August 2 deadline, satisfying the good faith requirement established in *Savoy*.

Significantly, the court emphasized that no party suffered prejudice from the one-day delay. Guardian Tax had not yet begun tax deed proceedings when Tasey's payment arrived, meaning the

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late payment did not disrupt any initiated process or create additional costs for interested parties.

The court also referenced Montana Code Annotated Section 15-18-412(b), which provides that quiet title proceedings are “void if the taxes were not delinquent or have been paid.” This statute supports the court’s interpretation that Montana’s legislative design favors allowing property owners to pay their debts and save their property while making creditors whole.

Dissenting Perspective

Two justices (including the chief justice) dissented. They argued substantial compliance cannot apply to legislatively enacted deadlines that trigger subsequent statutory actions. The dissent emphasized that Montana’s tax deed statutes create a sequential process

where redemption deadline expiration automatically triggers tax deed issuance the following day.

The dissent pointed out that *Savoy* did not involve a debtor’s failure to pay but, rather, the failure to comply with multiple notice requirements. *Savoy* held substantial compliance was sufficient where there was no dispute notice had in fact been given and received by the party entitled to notice.

The dissent walked through the statutory language, which it concluded required strict compliance with the payment deadline, not substantial compliance. The dissent believed the legislative language was so specific that it left no room for applying substantial compliance.

The dissent contended that allowing substantial compliance with statutory deadlines creates uncertainty in a process designed for precision. Under Montana law, tax deeds may be issued “the day following the

date that the redemption period expires,” creating what the dissent viewed as an inflexible timeline incompatible with substantial compliance analysis.

This disagreement highlights the tension between protecting property owners from technical forfeitures and maintaining certainty in tax deed procedures that other parties rely upon for investment decisions.

Practical Implications

For property owners, this decision provides crucial protection against losing property due to postal delays or other circumstances beyond their control when making good faith redemption efforts. The ruling encourages timely payment attempts while recognizing that perfect compliance may not always be achievable despite diligent efforts.

For tax deed purchasers and title professionals, the decision creates some uncertainty about redemption deadline

finality. Although the court emphasized that no prejudice occurred in this case because tax deed proceedings had not begun, future cases may present different circumstances requiring case-by-case analysis of substantial compliance claims.

The decision reinforces that Montana courts will scrutinize tax deed proceedings carefully and apply redemption statutes liberally to protect property owners. This approach aligns with the general principle that property forfeiture is disfavored and should occur only when statutory requirements are clearly unmet.

Key Takeaway

Guardian Tax MT, LLC v. Tasey establishes that Montana property owners can substantially comply with tax redemption deadlines through good faith payment attempts, even when technical delays prevent timely receipt by the government.