JUDICIAL COMMITTEE REPORT – February 24, 2025

1. *IN RE: Erin Ann Sharp,* U.S. Bankruptcy Appellate Panel, 9th Cir. (January 24, 2025). Only Westlaw cite is currently available: 2025 WL 289478.

Lakeland Community Club commenced judicial foreclosure proceedings against Erin Ann Sharp's ("Sharp's") residence to collect unpaid assessments. Appellant Vitruvian Design LLC ("Vitruvian") purchased at the sale, and Lakeland was paid in full. Sharp filed a Chapter 13 days before her right of redemption expired. Sharp proposed several plans where she maintained ownership of the property. Vitruvian opposed the plans, seeking relief from stay to permit the execution, delivery, and recording of the sheriff's deed.

The bankruptcy judge confirmed Sharp's third plan which allowed her to redeem the property by paying Vitruvian its purchase price and denied Vitruvian its motion for relief from stay. Vitruvian appealed.

The Bankruptcy Appellate Panel reversed, holding that a Chapter 13 debtor has limited options to reclaim property when a judicial foreclosure of that property precedes her bankruptcy. Even when state law allows for a statutory right of redemption, a subsequent bankruptcy filing may, at most, extend the right of redemption deadline – which is property of the bankruptcy estate - by 60 days (11 USCA Section 108(b)). Sharp did not argue her redemption rights survived beyond this extended date. Also, because a third party purchaser at a foreclosure sale is not a creditor with a live "claim" that can be modified, cured, or paid off under 11 USA Section 1322(b), there was nothing Sharp could do (other than timely redeem) to reclaim the property from Vitruvian in her Chapter 13.

2. *Quilbillies LLC v. First American Title Insurance Company*, U.S. Dist. Ct, W.D. WA (January 30, 2025). Only Westlaw cite is currently available: 2025 WL 346116.

Quilbillies tendered a claim over an easement that was not excepted in the title insurance policy. First American Title Insurance Company ("First American") accepted the claim and paid the policy limit. The Quilbillies filed suit alleging that it was bad faith for First American to pay policy limits and then refuse to defend their neighbors' subsequent lawsuit. The trial court granted First American's motion for summary judgment finding, in response to Quilbillies' motion for reconsideration, that there is no authority for the proposition that exercising a contractual right under the policy is bad faith.

3. *Skanska USA Building Inc. v. 1200 Howell Street LLC*, Ct. of Appeals, Div. 2 (January 22, 2025) (unpublished opinion).

We have seen this dispute before because the attorneys for 1200 Howell Street LLC ("Howell") asked the WLTA for an amicus brief regarding the lien release bond issue.

The dispute is one between Skanska USA Building Inc. ("Skanska") as general contractor and Howell as owner/developer. Among many issues in this case related to breach of contract, payment for work performed, etc., Skanska recorded a mechanic's lien against the property and, after the litigation commenced, amended the mechanic's lien purportedly to recognize the 391 condominium units that were identified in the condo declaration Howell filed. After a lengthy jury trial, the trial court entered a judgment against Howell for about $24M and a decree of foreclosure on Skanska's mechanic's lien. Howell moved to vacate the judgment stating that it had posted lien release bonds for about 340 of

the condominium units (so they could be sold), that the lien no longer attached to the property (it attached to the bond), and that the lien release bond barred foreclosure of the building. Howell also argued that the judgment should be amended to remove the foreclosure decree because the surety was not joined as a party. Skanska objected stating that the lien bonds are not a basis to revoke decree of foreclosure.

After the seven-week trial, the trial court entered a judgment against Howell and Howell filed an appeal. Meanwhile, Howell satisfied the judgment. Howell's surety paid about $32M to Skanska and Howell paid about $1.15M to Skanska. Skanska released the mechanic's lien acknowledging full satisfaction of the judgment, but reserved the right to recover under the lien statute depending the results of the appeal.

In the case referenced above, the appellate court mostly affirmed the trial court on all issues subject of Howell's appeal, including with respect to the lien release bond issue. The appellate court stated that there is no binding case law addressing the issue of naming the surety if a lien is converted to a lien release bond *after* litigation commences and agreed with Skanska, holding "under the facts of this case" that Skanska was not required to join the bond surety as a necessary party in order for the trial court to foreclose on the lien." The appellate court also disagreed with Howell that the foreclosure should be adjudicated against the lien release bonds, stating "[t]he sale of the condominium units and the conversion of proportional liens to lien release bonds is not fatal to Skanska's ability to foreclose on the proportional liens and bonds."