



# The Many Faces of the BFP – A Day in 'Claims Court'

**George Perez**, *Claims Manager, The Fund*

**Michael Rothman**, *Legal Education Manager, The Fund*

**Carlos Lerman**, *Shareholder, Lerman & Whitebook, P.A.*

# Case No. 1 - The Statutory BFP: Tyson Enterprises, Inc. v. Douglas

- Tyson Enterprises (creditor)
  - Filed lawsuit against King for money damages only
  - King transfers title to Arum
  - Arum sells to Douglas
  - FJ in favor of Tyson
  - Tyson claims fraudulent transfer
- Douglas (current fee owner)
  - Paid valuable consideration to Arum
  - Does not know Tyson Enterprises or King
  - No knowledge of lawsuit between Tyson and King

# Case No. 1 - The Statutory BFP: Tyson Enterprises, Inc. v. Douglas

---

- Ruling: In favor Douglas
- Florida Statutes 726.105 & 726.106 – the power to set aside a fraudulent transfer
- Florida Statute 726.109 - the statutory BFP
- No actual or constructive notice on the part of Douglas

## Case No. 2 - BFP Based on Recording Act: Borg v. Connors

---

- Agassi sold house to Borg
- Borg closed on Monday, Jan. 3
- Borg recorded deed on Wednesday, Jan. 5
- Borg paid value
- Borg did not know about Connors

- Agassi sold house to Connors
- Connors closed on Tuesday, Jan. 4
- Connors recorded deed on Thursday, Jan. 6
- Connors paid value
- Connors did not know about Borg

## Case No. 2 - BFP Based on Recording Act: Borg v. Connors

---

- Ruling in favor of Connors
- Florida is a “notice” state, see Sec. 695.01, F.S.
- Florida law protects the subsequent BFP
- Borg and Connors both victims of Agassi’s fraud
  - But who could’ve better protected himself?
  - Borg could have and should have recorded on Monday
  - Connors would have then been on constructive notice
  - Demonstrates importance of prompt recording!

## Case No. 3 – BFP In The Face of Forgery: Bartman v. Buckner

---

- Bartman owns property free and clear
  - Deed from Bartman to grantor
  - Deed from grantor to Buckner
  - Bartman discovers deeds
  - Bartman sues to quiet title based on forgery
- Buckner paid valuable consideration
  - Not familiar with Bartman
  - No knowledge of alleged forgery

# Case No. 3 – BFP In The Face of Forgery: Bartman v. Buckner

---

- Ruling: In favor of Buckner
- Void vs. Voidable
- General Rule- no BFP in face of a forgery
- Exception- Equitable Estoppel
- *Zustrassen v. Stonier*, 786 So.2d 65 (Fla. 4<sup>th</sup> DCA 2001)
- Knowledge by victim + delay + intervening interest = BFP
- No knowledge on the part of Buckner

## Case No. 4 - BFP in the Face of Fraud: Winthorpe v. Valentine

- Winthorpe falls into default on mortgage. Moves out of home. Is introduced to Beeks
  - Beeks gets Winthorpe to sign a QCD
  - Winthorpe thought he was signing loan modification application papers
  - Beeks deeds to Duke. Duke deeds to Valentine
  - Winthorpe sues Valentine to recover property on basis of fraud
- Valentine buys from Duke
  - Claims not knowing anything about Duke and Beeks being bad guys
  - Valentine never met or heard of Winthorpe
  - Valentine claims he is a BFP



# Case No. 4 - BFP in the Face of Fraud: Winthorpe v. Valentine

---

- Ruling for Valentine
- Not a case of forgery
- Void v. Voidable
- House was vacant. Valentine not on notice of party in possession
- Valentine not part of the conspiracy
- Valentine is a BFP
- See *McCoy v. Love*, 382 So.2d 647 (Fla. 1979)

# Case No. 5 – BFP Based on Reliance: 1st Bank of Madoff v. Rothstein National Bank

- 1st Bank of Madoff (original mortgagee)
  - Rothstein National Bank (subsequent mortgagee)
  - Erroneous satisfaction of mortgage by 1st Bank of Madoff
  - Defaults on both mortgages
  - Priority dispute
- Rothstein National Bank is unrelated to 1st Bank of Madoff
  - Satisfaction of record at time of origination of mortgage
  - No knowledge of erroneous satisfaction

# Case No. 5 – BFP Based on Reliance: 1st Bank of Madoff v. Rothstein National Bank

---

- Ruling- in favor of Rothstein National Bank
- *United Service Corp. v. Vi-An Const. Corp.*, 77 So.2d 800 (Fla. 1955)
- Satisfaction based on fraud or administrative error (i.e. innocent lender) + no intervening interest = set aside/preserve priority
- Intervening interest (without knowledge of fraud or administrative error)? Junior lienor prevails. Reliance on official record *negates* relief sought by claimed senior lender

# Case No. 6 – BFP Matters Not Entitled To Recording: Adverse Bank v. Hard Money Financial, LLC

- Adverse Bank made \$300k loan
  - Insured in first lien position
  - Loan goes into default and Adverse Bank sues to foreclose
  - Adverse Bank names Hard Money Financial as junior lienor
  - Parties stipulate that Adverse Bank's mortgage was recorded ahead of Hard Money Financial's mortgage
- Hard Money Financial made \$300,000 hard money loan
  - Title report issued by Second National Title & Auto Repairs failed to disclose Adverse Bank
  - Hard Money Financial made its loan on basis of appraisal
  - Admits its mortgage was recorded after Adverse Bank's mortgage but asserts priority based upon defective acknowledgement

# Case No. 6 – BFP Matters Not Entitled To Recording: Adverse Bank v. Hard Money Financial, LLC

---

- Ruling for Hard Money Financial, LLC
- Sec. 689.02, F.S. requires that a mortgage must be acknowledged to be recorded
- Adverse Bank's mortgage bears a jurat, not an acknowledgement
- Instruments not entitled to recordation impart no constructive notice
- See *Summa Investing Corporation v. McClure*, 569 So.2d 500 (Fla 3d DCA 1990)

**Court is Adjourned**



*Thank You!*  
for attending