

Real Property, Financial Services, & Title Insurance Update: Week Ending May 24, 2019

May 24, 2019

Real Property Update

- **Attorneys' Fees / Voluntary Dismissal:** it is an exception to the general rule that when a plaintiff voluntarily dismisses an action the defendant is the prevailing party, when both parties compromised in agreeing to a settlement to end their litigation - [Valencia Golf & Country Club Homeowners' Ass'n, Inc. v. Cmty. Res. Servs., Inc.](#), No. 2D17-4986 (Fla. 1st DCA May 22, 2019) (reversed)
- **Attorneys' Fees / Voluntary Dismissal / Foreclosure:** borrower entitled to attorneys' fees as prevailing party, where bank voluntarily dismissed its case and there was never a judicial determination by trial court that bank was not a party to the contract (note and mortgage). [Venezia v. JP Morgan Mortgage Acquisition Corp.](#), No. 4D18-1278 (Fla. 4th DCA May 22, 2019) (reversed and remanded)

Financial Services Update

- **Rooker-Feldman Doctrine:** pursuant to Rooker-Feldman doctrine preventing a federal court from reviewing state court decisions, the Eleventh Circuit affirmed a district court's dismissal of a borrower's lawsuit against a lender and servicer seeking declaration that mortgage loan was rescinded because a prior foreclosure lawsuit in state court between the parties resulted in a final judgment - [Zamore v. Deutsche Bank Nat'l Trust Co.](#), No. 18-13635 (11th Cir. 2019)
- **TILA:** borrower's notice of rescission pursuant to TILA was not proper and was nullified by borrowers continuing to make payments - [Madura v. BAC Home Loans Servicing, L.P.](#), No. 18-11716 (11th Cir. May 15, 2019)

- **Fair and Accurate Credit Transactions Act:** merchant that prints more than five digits of a credit card number in violation of FACTA causes the person whose account number is disclosed to suffer a concrete injury sufficient to confer standing to that person to pursue claim - [Muransky v. Godiva Chocolatier, Inc.](#), Nos. 16-16486, 16-16783 (11th Cir. 2019)

Title Insurance Update

- **Insurance law:** New York insurance law prohibiting certain mortgage lenders from requiring borrowers to obtain title insurance from a specific title insurer, agent, or broker did not apply where transaction was between a seller and a purchaser of real property - [Wenig Saltiel, LLP v. Specialized Loan Servicing, LLC](#), 2016-3083 RIC (Sup. Ct. App. N.Y. May 10, 2019) (affirming dismissal)

Related Practices

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