

Real Property, Financial Services, & Title Insurance Update: Week Ending February 28, 2020

February 28, 2020

Real Property Update

- **Forum Selection / Equitable Tolling of Statute of Limitations:** Equitable tolling was inapplicable where FDIC failed to raise running of statute of limitations in defense of federal court's dismissal of a timely filed lawsuit based upon the mandatory forum-selection clause that required the lawsuit be filed in the Miami-Dade Circuit Court - [FDIC v. Nationwide Equities Corp.](#), No. 3D17-270 (Fla. 3d DCA Feb. 26, 2020) (affirmed)
- **Premises Liability:** Association owed invitees a non-delegable duty of care, and was jointly and severally liable for the negligence of its contractor, but was not liable for the owner's negligence arising from separate and independent duty to warn - [Walters v. Beach Club Villas Condo., Inc.](#), No. 3D17-0753 (Fla. 3d DCA Feb. 26, 2020) (affirmed, in part, reversed, in part)
- **Lease / Option to Purchase:** Restriction that lease was not assignable without written consent of landlord was not incorporated into purchase option rider to the lease and, therefore, landlord's approval was not necessary for tenant to assign option to third party - [JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.](#), No. 2D18-523 (Fla. 2d DCA Feb. 28, 2020) (affirmed, in part, reversed, in part, remanded)
- **MSJ Affidavit:** Although a party may not repudiate its testimony to create an issue of fact that would preclude summary judgment, party may by affidavit provide additional information consistent with prior testimony - [Williams v. Ryta Food Corp.](#), No. 3D19-0126 (Fla. 3d DCA Feb. 26, 2020) (reversed and remanded)
- **Specific Performance:** Buyer who was ready, willing, and able to close pursuant to purchase/sale contract was entitled to specific performance against seller - [Diaz v. Navajas](#), No. 3D19-0487 (Fla. 3d DCA Feb. 26, 2020) (affirmed).

Financial Services Update

- **FCRA / Class Actions:** Class members who had terrorist alerts unlawfully placed on the consumers' credit reports possessed standing on each of the class claims - [Ramirez v. TransUnion LLC](#), No. 17-17244 (9th Cir. Feb. 27, 2020)
- **FDCPA / Communication:** Letter containing the words "current balance" did not mislead consumer when account was not accruing interest or late charges - [Moore v. Midland Credit Mgmt., Inc.](#), No. 2:19-cv-00959 (E.D.N.Y. Feb. 25, 2020) (dismissing amended complaint)

Title Insurance Update

- **Exclusion 3(d):** Adopting Captiva rule and holding that although Texas' first spade rule provides that a mechanic's lien relates back to the earliest date the work began for purposes of determining priority, the rule does not trigger coverage when the lien is filed after the date of the policy and the contractors and suppliers were not owed money for completed work as of the date of the policy - [Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 3:18-cv-00380 (N.D. Tex. Feb. 20, 2020) (memorandum opinion and order granting defendant's motion for summary judgment)
- **Exclusion 3(a):** Adopting BB Syndication rule and holding that 3(a) excludes unpaid post-policy work where insured lender stops loan advances after the date of the policy - [Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 3:18-cv-00380 (N.D. Tex. Feb. 20, 2020) (memorandum opinion and order granting defendant's motion for summary judgment)
- **Exclusion 3(d):** Alleged losses arising by reason of HOA lien recorded after the date of the policy are barred by exclusion 3(d), notwithstanding the fact that the HOA's CC&Rs were recorded pre-policy - [HSBC Bank USA, N.A. v. Fidelity Nat'l Title Ins. Co.](#), No. 3:19-cv-00265 (D. Nev. Feb. 20, 2020) (order granting defendant judgment on the pleadings)

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