

Real Property, Financial Services, & Title Insurance Update: Week Ending November 1, 2019

November 08, 2019

Real Property Update

- **Foreclosure / Attorney's Fees:** Attorneys' fee award must be supported by expert testimony from an attorney who is not involved in the underlying case – [Salinas v. U.S. Bank Tr., N.A.](#), No. 2D17-4902 (Fla. 2d DCA Nov. 1, 2019) (reversing fee award)

Title Insurance Update

- **Title Policy / Reformation:** Affirming reformation of lender's policy on the basis of mutual mistake to include exceptions for two senior deeds of trust where insured lender was aware of senior liens and agreed at the time to be in third position – [Bapco LLC v. Fidelity Nat'l Title Ins. Co.](#), No. 1 CA-CV 18-035 (Ariz. Ct. App. Oct. 29, 2019) (affirming summary judgment)
- **Title Policy Coverage:** Lender's policy did not cover loss caused by homeowners association lien recorded after policy issuance – [Wells Fargo Bank, N.A. v. Fidelity Nat'l Title Ins. Co.](#), No. 3:19-cv-00241 (D. Nev. Oct. 29, 2019) (granting dismissal)

Financial Services Update

- **FCCPA / FDCPA:** The plaintiff did not demonstrate a genuine issue of material fact that medical providers and their attorney violated the FCCPA and FDCPA by conditioning medical services on a guarantee of payment, unsuccessfully billing her insurers, sending balance statements, and enforcing the LOP through their attorney after her personal injury claims were settled because the plaintiff presented no evidence of an agreement between the defendants to violate the FCCPA, any direct communication by any of the defendants with her relating to debt collection, no harassing or abusive conduct by any defendant, or any false or misleading representations by the defendants – [Daley v. Bono](#), No. 8:18-cv-01465 (M.D. Fla. Oct. 28, 2019) (granting defendants’ motion for summary judgment)
- **FDCPA / Class Action / Predominance:** The district court abused its discretion in deciding that common issues did not predominate the class’s FDCPA claim because the legal question of whether the Bankruptcy Code precludes or displaces any remedy available under the FDCPA and FCCPA for a claim that a creditor engaged in false or deceptive conduct by trying to collect a debt in violation of a discharge injunction is common to all class members – [Sellers v. Rushmore Loan Mgmt. Servs., LLC](#), No. 18-11420 (11th Cir. Oct. 29, 2019) (vacating order denying class certification and remanding)
- **FCRA / Standing:** A consumer suffers a concrete Article III injury in fact when a third party obtains his or her credit report for a purpose not authorized by the FCRA. Further, a consumer need allege only that her credit report was obtained for a purpose not authorized by the FCRA to survive a motion to dismiss – [Nayab v. Capital One Bank \(USA\), N.A.](#), No. 17-55944 (9th Cir. Oct. 31, 2019) (reversed and remanded)
- **TCPA:** The plaintiff failed to establish a TCPA claim when he offered no evidence to support his allegation that he revoked his consent to be called in a telephone conversation with a bank as it relates to a specific account – [Mendoza v. Allied Interstate LLC](#), No. 8:17-cv-00885 (C.D. Cal. Oct. 22, 2019) (granting defendant’s motion for summary judgment)
- **TCPA / ATDS / Sufficiency of Allegations:** The plaintiff did not adequately allege that the defendants used an automatic telephone dialing system to call his cell phone in violation of the TCPA because the plaintiff’s complaint merely parroted the TCPA’s statutory language – [Shcherb v. Angi Homeservices Inc.](#), No. 1:19-cv-00367 (S.D.N.Y. Oct. 25, 2019) (granting defendants’ motion to dismiss).
- **TILA:** Federal class action settlement precluded mortgagor from asserting claims for breach of federal TILA, state unfair competition laws, state unfair and deceptive trade practices statutes, state consumer protection laws, and loan agreement, where the class action involved plaintiffs similarly situated as mortgagor, the settlement released and discharged all claims such as those mortgagor asserted, mortgagor did not opt out of the settlement class, and, in fact, the mortgagor received payment pursuant to the settlement – [Wachovia Mortg. FSB v. Macwhinnie](#), 175 A.D.3d 1587 (N.Y. App Div. 2019)

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