

# Real Property, Financial Services, & Title Insurance Update: Week Ending October 19, 2018

October 22, 2018

## Real Property Update

- **Chapter 720 / Prevailing Party Fees:** developer that successfully defended against association's lawsuit for declaratory and injunctive relief was properly awarded prevailing party attorneys' fees and costs based on Florida Statutes, section 720.305(1) – [Holiday Isle Improvement Ass'n, Inc. v. Destin Parcel 160, LLC](#), No. 1D17-5241 (Fla. 1st DCA Oct. 15, 2018) (affirmed)
- **Foreclosures / Condition Precedent:** plaintiff adequately established at trial that predecessor in interest satisfied condition precedent to filing suit by providing written notice of default – [Thorlton v. Nationstar Mortg., LLC](#), No. 2D17-2328 (Fla. 2d DCA Oct. 17, 2018) (affirmed)

## Financial Services Update

- **FDCPA / Dismissal:** dismissing FDCPA claims based on state court action as untimely under §1692k(d) because general course of litigation did not give rise to continuing violations, and dismissing remainder FDCPA claims under §1692e after applying heightened pleading standard under Rule 9(b) – [Melford v. Kahane & Assocs.](#), No. 18-cv-60881 (S.D. Fla. Oct. 17, 2018)
- **FDCPA / Rooker-Feldman Doctrine:** entering judgment on the pleadings on FDCPA claim that defendants misrepresented the character and legal status of the debt under §1692e(2)(A) under the Rooker-Feldman doctrine, where the debt stemmed from a state court default judgment – [Bradley v. Selip & Stylianou, LLP](#), No. 17-CV-6224-FPG (W.D.N.Y. Oct. 15, 2018)

## Title Insurance Update

- **Collateral Source Rule:** where the defendant procures title insurance for the benefit of the plaintiff, the plaintiff cannot then rely on the collateral-source rule for a double recovery –[Sky View at Las Palmas, LLC v. Mendez](#), No. 17-0140 (Tex. June 1, 2018) (opinion reversing and remanding)
- **Settlement:** where plaintiff claims single, indivisible injury from multiple defendants, then settles with some, settlement amounts must be set off against judgment –[Sky View at Las Palmas, LLC v. Mendez](#), No. 17-0140 (Tex. June 1, 2018) (opinion reversing and remanding)
- **Attorney Discipline:** public censure appropriate discipline for attorney who violated New York Rules of Professional Conduct by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, engaging in conduct prejudicial to the administration of justice and engaging in conduct that adversely reflects on the lawyer’s fitness as a lawyer, where attorney misrepresented his authority to act on behalf of a title insurance company when agency relationship was terminated several months prior to misrepresentations, and refunded title premiums collected–[In re Robert W. Carey](#), No. D-129-18 (N.Y. Ct. App. Oct. 18, 2018) (memorandum and order)
- **Measure of Damages:** Insureds’ damages are its actual loss, or “plainly the amount needed to pay off [an] undiscovered [first] mortgage” and not the amount calculated by the insured’s expert. The insured’s “own self-interested estimate combined with its nebulous connection to anything Chicago Title did is too tenuous to be a measure of actual loss.”–[RCN Capital, LLC v. Chicago Title Ins. Co.](#), No. HHDCV176076972 (Conn. Sup. Ct., Aug. 27, 2018) (memorandum decision [insured filed a notice of appeal])
- **Protective Order / Discovery:** Insurer entitled to protective order staying discovery where plaintiff had conducted similar discovery in related case; plaintiff’s interest in proceeding expeditiously outweighed by substantial burden on insurer having to participate in discovery while pending motion to dismiss argues insurer’s claims are completely barred and appeal of related case may be determinative; efficiency and fairness of delaying the proceedings pending resolution of potentially dispositive motion to dismiss; public interest served by staying discovery and preventing multiple, repetitive lawsuits from clogging court’s docket; and certain serious inequities involved in allowing discovery to proceed where insured was found to have committed fraud against insurer in related case – [Williams v. Stewart Title Co.](#), No. 18-CV-00397-PAB-NRN (D. Colo. Oct. 10, 2018) (order on motion for protective order)

## Related Practices

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