

Real Property, Financial Services, & Title Insurance Update: Week Ending October 8, 2021

October 08, 2021

Real Property Update

- **Bert Harris Act:** Certifying question whether the 2021 amendment to the Bert J. Harris Jr. Private Property Rights Protection Act clarifies the existing law so that plaintiff may maintain an action under the act where plaintiff owned property when plaintiff filed a claim but was divested of ownership before trial – [Dean Wish, LLC v. Lee Cnty.](#), No. 2D19-4843 (Fla. 2d DCA Oct. 6, 2021) (affirmed; question certified)
- **Property Lien / Recordation:** Per section 28.222(3), Florida Statutes, which addresses when an instrument is required to be recorded, issuance of a writ of mandamus was appropriate where the clerk of court failed to carry out the statutory duty of recording an instrument, which here was a claim of lien on property under section 713.08(5), upon payment by the lienor within the relevant statutory period – [Phillips v. Pritchett Trucking, Inc.](#), No. 1D20-2068 (Fla. 1st DCA Oct. 6, 2021) (affirmed)
- **Recordation:** Clerk conflated the issues of *when* an instrument is *required to be recorded*, which is addressed by section 28.222(3), Florida Statutes, and when an instrument is *deemed recorded*, which is addressed by section 695.11, Florida Statutes – [Phillips v. Pritchett Trucking, Inc.](#), No. 1D20-2068 (Fla. 1st DCA Oct. 6, 2021) (affirmed)

- **Condo Association / (Limited) Common Elements:** Trial court erred in finding the developer responsible for laundry-related utility expenses where condominium declaration did not shift relevant expense allocation, which is codified in chapter 718, Florida Statutes, from condominium association to developer, and where the first amendment to declaration was clear and unambiguous that developer had the unilateral right to reject any further amendments, including one designed to shift the burden of the aforementioned expenses to developer – [First Equitable Realty III, Ltd. v. Grandview Palace Condo. Ass’n, Inc.](#), No. 3D20-1807 (Fla. 3d DCA Oct. 6, 2021) (affirmed in part; reversed in part; remanded)
- **Deed / Tenancy by the Entirety:** A conveyance to spouses as husband and wife, even if said conveyance does not describe or refer to owners’ relationship as a marital one, creates a tenancy by the entirety in the absence of express language showing a contrary intent – [Ramos v. In re Estate of Ramos](#), No. 3D21-818 (Fla. 3d DCA Oct. 6, 2021) (reversed and remanded)
- **Deed / Tenancy by the Entirety:** When wife died, her one-half interest passed to her then-living husband, and when husband died four years later, husband’s now-entire interest in property went to his estate – [Ramos v. In re Estate of Ramos](#), No. 3D21-818 (Fla. 3d DCA Oct. 6, 2021) (reversed and remanded)
- **Land Use / Procedural Due Process:** Given that its second-tier certiorari review is limited to whether the lower tribunal afforded procedural due process, and upon finding that the petitioner was provided with notice of the proceedings and an opportunity to be heard in those proceedings, court denied petition for writ of certiorari seeking to quash city commission’s approval of a decision by city’s historic preservation board – [Cerdea v. City of Coral Gables](#), No. 3D21-1064 (Fla. 3d DCA Oct. 6, 2021) (denied)

Financial Services Update

- **TILA / Vicarious Liability:** Complaint did not include a vicarious liability claim where plaintiff did not remember reviewing or signing credit agreement because an AC technician “took care” of all paperwork, and complaint was geared toward the contents of the credit agreement, not the AC technician’s actions – [Walters v. Fast AC, LLC](#), No. 2:19-cv-00070 (M.D. Fla. Oct. 6, 2021) (denying motion for reconsideration)
- **TCPA / Class Action:** After plaintiff and class members prevailed at initial trial (*Perez I*), plaintiff then sued defendant’s insurer for bad faith, which resulted in a settlement (*Perez II*); even though *Perez II* was not a class action, it was brought by plaintiff in his fiduciary capacity, and the court thus evaluated the settlement using the same core principles it would apply with a class action settlement – [Perez v. Rash Curtis & Assocs.](#), No. 4:16-cv-03396 (N.D. Cal. Oct. 1, 2021)

- **FDCPA / Debt Collection Letter:** Affirming judgment that defendant did not violate FDCPA for using name other than its own where defendant's name appeared seven times in debt collection letter – [Rubin v. Montefiore Med. Ctr.](#), No. 20-2721 (2d Cir. Oct. 5, 2021)

Title Insurance Update

- **Duty to Defend:** Title Insurer did not err in denying title defect claim because insured's claim was untimely – [Hayward Prop., LLC v. Commonwealth Land Title Ins. Co.](#), No. 4:17-cv-06177 (N.D. Cal. Sept. 30, 2021) (granting summary judgment in favor of title insurer)
- **Duty to Defend / Fraudulent Wire Transfer:** Title agency that lost funds due to a fraudulent wire transfer instruction was unable to establish a covered loss under its cyber protection package policy because, among other reasons, it did not authenticate the transfer pursuant to procedures outlined in the policy – [Star Title Partners of Palm Harbor, LLC v. Ill. Union Ins. Co.](#), No. 8:20-cv-02155 (M.D. Fla. Sept. 1, 2021) (granting summary judgment against title agency)
- **Renewal Judgment:** Title insurer, as judgment creditor and assignee of a 1998 unsatisfied judgment, established the necessary criteria for entitlement to a renewal judgment – [First Am. Title Ins. Co. v. Appelbaum](#), No. 507105/20 (N.Y. Sup. Ct. Oct. 4, 2021) (granting summary judgment in favor of title insurer)
- **Setoff:** Title insurer not entitled to a setoff for the amount of appraisal company's settlement with plaintiff because title insurer did not carry burden of proving that any portion of settlement sum was attributable to the same injuries for which title insurer was found liable – [FDIC v. Chicago Title Ins. Co.](#), No. 20-1572 (7th Cir. Aug. 31, 2021) (reverse and remand)
- **Prejudgment Interest:** Court-appointed receiver that obtained judgment against title insurer that acted as escrow trustee for fraudulent loan closing was not entitled to prejudgment interest – [FDIC v. Chicago Title Ins. Co.](#), No. 20-1572 (7th Cir. Aug. 31, 2021) (reverse and remand)

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