

Real Property, Financial Services, & Title Insurance Update: Week Ending October 9, 2020

October 09, 2020

Real Property Update

- **Condominium / Release:** condominium unit owner's claims against condominium association and board were barred by subject release; claims were based on water intrusion resulting from damaged roof that existed prior to date designated in release - [Escadote I Corp. v. Ocean Three Condo. Assoc., Inc.](#), No. 3D19-0500 (Fla. 3d DCA Oct. 7, 2020) (affirming entry of final summary judgment)
- **Condominium / Shared Facilities:** condominium declaration conflicted with statutorily circumscribed common elements; in Florida, all provisions of a condominium declaration must conform the Florida Condominium Act, chapter 718, Florida Statutes, and to the extent they conflict therewith, the statute must prevail - [IconBrickell Condo. No. Three Ass'n, Inc. v. New Media Consulting, LLC](#), No. 3D19-0521 (Fla. 3d DCA Oct. 7, 2020) (affirming summary declaratory judgment in favor of New Media)

Financial Services Update

- **FDCPA / Bona Fide Error Defense:** genuine issues of material fact existed regarding whether debt collector maintained procedures reasonably adapted to avoid its error in attempting to collect on state court judgment for unpaid debt from consumer who was not the debtor- [Wagner v. Chiari & Ilecki, LLP](#), No. 19-758 (2d Cir. 2020) (vacating, in part, and remanding district court's summary judgment order)

- **FCRA / 1681i(a) / Sufficiency of Allegations:** plaintiff's complaint did not allege that reported debt on his credit report was inaccurate as to the amount; rather, plaintiff alleged that the reported debt was inaccurate because he did not owe liquidated damages, which is a contractual dispute requiring resolution by a court of law, not a credit reporting agency - [Batterman v. BR Carroll Glenridge, LLC](#), No. 20-11717, 2020 WL 5943872 (11th Cir. 2020) (affirming order granting judgment on the pleadings)

Title Insurance Update

- **Equitable Subrogation:** even though wife not a party to lender's mortgage, lender was equitably subrogated to prior position of mortgage, to which wife was a party, to the extent same was discharged with proceeds of lender's loan; lender entitled to foreclose equitable lien to avoid wife's unjust enrichment - [21st Mortg. Corp. v. Lapham](#), No. 19-P-1357 (Mass. App. Ct. Oct. 6, 2020) (subrogation judgment affirmed; order denying motions for post-judgment relief affirmed)

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