

Real Property, Financial Services, & Title Insurance Update: Week Ending September 20, 2019

September 20, 2019

Real Property Update

- **Foreclosure / Doc Stamps:** failure to pay documentary stamp and intangible taxes on increased principal balance under loan modification rendered final foreclosure judgment unenforceable - [Schroeder v. MTGLQ Inv'rs, LP](#), No. 4D18-3177 (Fla. 4th DCA Sept. 18, 2019) (reversing final foreclosure judgment)

Financial Services Update

- **TCPA / Use of Prerecorded Voice:** call logs reflecting entries with the notation "virtual msg to AUTOV" helped create genuine issue of material fact as to whether the defendant violated the TCPA by using prerecorded messages - [Johnson v. Capital One Servs., LLC](#), No. 0:18-cv-62058 (S.D. Fla. Sept. 19, 2019) (denying summary judgment in part)
- **TCPA / Dual Purpose Calls:** genuine issue of material fact existed as to whether calls placed to customer of shipping services were dual-purpose calls advertising or soliciting return shipping services, based on repetition of the deadline in messages as well as evidence trace agents encouraged called parties to purchase return shipping services - [Abdallah v. FedEx Corp. Servs., Inc.](#), No. 1:16-cv-03967 (N.D. Ill. Sept. 18, 2019) (denying summary judgment in part)
- **FDCPA / 1692e(8) / Reporting Disputed Debt to CRA Without Disclosing Dispute:** fax confirmations did not prove that debt collector was on notice that debts were disputed and thus violated 15 U.S.C. § 1692e(8), because they did not support that anyone at the business actually viewed the faxes or used that particular machine - [Irvin v. Nationwide Credit & Collection, Inc.](#), No. 1:18-cv-02945 (N.D. Ill. Sept. 17, 2019) (granting summary judgment)

Title Insurance Update

- **Subrogation:** title insurer's indemnification and unjust enrichment claims against owners who knowingly allowed a different mortgage to be paid off, rather than the one they were supposed to be refinancing, could not be attacked by special defenses of laches, unclean hands, or third-party beneficiary contract - [Fidelity Nat'l Title Ins. Co. v. Vontell](#), No. CV-17 6024608 (Conn. Super. Ct. Aug. 29, 2019) (granting motion to strike defenses)

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