

Real Property & Financial Services Update: Week Ending December 21, 2018

December 21, 2018

Real Property Update

- **Foreclosure / Intervention:** because third-party purchaser purchased property at issue after lender filed its notice of lis pendens, trial court erred by allowing third-party to intervene - [Space Coast Credit Union v. Goldman](#), No. 3D18-252 (Fla. 3d DCA Dec. 18, 2018) (reversed)
- **Real Property / Mortgage Priority:** evidence that subsequent mortgagee was on notice of irregularities surrounding CitiMortgage's alleged release of its mortgage and voluntary dismissal of foreclosure, (including that purported satisfaction of CitiMortgage's lien was not executed by an officer or agent of CitiMortgage and that purported notice of voluntary dismissal had no certificate of service), created genuine issues of material fact rendering summary judgment improper - [CitiMortgage v. Porter](#), No. 3D17-2469 (Fla. 3d DCA Dec. 19, 2018) (reversing summary judgment in favor of subsequent mortgagee)
- **Foreclosure / Payment History:** bank failed to establish foundation for entry of its business records concerning amount due and owing where representative's affidavit said nothing about incorporating predecessor servicer's payment records, provided no explanation regarding how predecessor's records were verified for accuracy, or how Bank acquired them - [Sacks v. Bank of N.Y. Mellon](#), No. 4D17-2122 (Fla. 4th DCA Dec. 19, 2018) (affirmed in part, reversed and remanded in part)
- **Injunction / Easement:** latent ambiguity in description of an easement warranted consideration of extrinsic evidence and granting of injunction enforcing easement - [Janoura Partners, LLC v. Palm Beach Imports, Inc.](#), No. 4D17-2582 (Fla. 4th DCA Dec. 19, 2018) (affirmed)

- **Foreclosure / Amounts Owed:** because the values awarded for PMI and interest did not match the loan histories admitted into evidence, bank failed to establish the amount recoverable for those items at summary judgment - [Culbertson v. 21st Mortg. Corp.](#), No. 4D18-164 (Fla. 4th DCA Dec. 19, 2018) (affirmed in part, reversed in part)

Financial Services Update

- **FCRA / Sufficiency of Pleading:** plaintiff failed to state a claim under the FCRA against credit reporting agency for reporting void and uncollectible loans because she did not adequately allege that the disputed debt was inaccurate - [Padgett v. Clarity Services, Inc.](#), No. 8:18-cv-1918-T-30CPT (M.D. Fla. Dec. 13, 2018) (dismissing case with prejudice)
- **FDCPA:** letter to collect on a time-barred debt was not misleading for failing to disclose that a partial payment could revive the statute of limitations to sue on the debt because the least sophisticated consumer could not be misled by omission of language regarding potential consequences - [Madinya v. Portfolio Recovery Associates, LLC](#), No. 18-cv-61138-Bloom/Valle (S.D. Fla. Dec. 14, 2018) (granting defendant's motion for judgment on the pleadings).
- **FDCPA / FCCPA / TILA / Monthly Statements:** monthly statements sent to debtor were not communications in connection with collection of debt and complied with TILA requirements - [Daniels v. Select Portfolio Servs., Inc.](#), No. 8:18-cv-1652-T-30CPT (M.D. Fla. Dec. 18, 2018) (dismissing case with prejudice)
- **TCPA / Denial of Class Certification:** Class certification was inappropriate where ascertainability was not administratively feasible and common issues of law and fact do not predominate. Claim involved whether Defendant called class members' phone numbers using a prohibited method and that phone numbers were in some way incorrect; determination of whether numbers were incorrect is complex and fact-specific as to issue of how the number entered Defendant's records and the issue of consent - [Wilson v. Badcock Home Furniture](#), No. 8:17-cv-02739-T-02AAS (M.D. Fla. Dec. 19, 2018) (denying motion for class certification)

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