

Real Property, Financial Services, & Title Insurance Update: Week Ending March 22, 2024

March 25, 2024

Real Property Update

- **Landlord-Tenant / Rent Into Court Registry:** Because tenant was not previously ordered to deposit monies into court registry, no duty under section 83.232(5), Florida Statutes, arose to do so – [34th Street, LLC v. Pro-Karting Experience, Inc.](#), No. 2D22-3139 (Fla. 2d DCA Mar. 22, 2024) (affirming order invalidating writ of possession)
- **Foreclosure Sale:** Equitable factors that may support setting aside foreclosure sale include gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of sale – [Hart v. Specialized Loan Servicing, LLC](#), No. 2D23-910 (Fla. 2d DCA Mar. 22, 2024) (affirming order denying motion to vacate foreclosure sale)
- **Foreclosure Sale:** The substance of an objection to a foreclosure sale must be directed toward conduct that occurred at, or which related to, the foreclosure sale itself – [Hart v. Specialized Loan Servicing, LLC](#), No. 2D23-910 (Fla. 2d DCA Mar. 22, 2024) (affirming order denying motion to vacate foreclosure sale)
- **Security Agreement / Admission of Duplicate Into Evidence:** Original security agreement was not required to be admitted into evidence; section 90.953(1), Florida Statutes, states that duplicates are admissible to the same extent as originals, unless the document is a negotiable instrument or any other writing that evidences a right to payment of money, and is not itself a security agreement – [Sanger v. Asher](#), No. 5D22-2104 (Fla. 5th DCA Mar. 22, 2024) (affirming final judgment as it pertained to security agreement)

Title Insurance Update

- **Lis Pendens / Whether Agent Owes Duty to Proponent:** Escrow agent and title insurance issuing agent who close a transaction and issue a title insurance policy despite a recorded notice of lis pendens per the instructions of the parties to the transaction and title insurance policy do not owe any duty to the proponent of the notice of lis pendens, a nonparty to the transaction and title insurance agreement – [Wheels of Justice, LLC v. Title Guaranty Escrow Services, Inc.](#), No. CAAP-19-0000335 (Haw. Ct. App. Mar. 20, 2024) (affirming summary judgment)
- **TILA & Unfair or Deceptive Practices Violations Against Title Insurer / Sufficiency of Allegations:** Plaintiff’s claim that First American colluded with a real estate rescue company by consummating an obviously unlawful loan and including a broad arbitration clause in the escrow provisions, and thereby engaged in unfair or deceptive business practices in violation of Washington’s consumer protection act, amounted to conclusory assertions fashioned from whole cloth and failed to state a cause of action under TILA and Washington’s escrow and consumer protection acts – [Cary v. First American Title Insurance Co.](#), No. 2:22-cv-00538 (W.D. Wash. Mar. 13, 2024) (granting motion to dismiss)

Financial Services Update

- **FCRA & Defamation / Preemption:** Plaintiffs’ claim that furnisher defamed them by way of false reporting was preempted by section 16811(b) because the claim was “with respect to ... subject matter regulated under ... section 1681s-2” of the Fair Credit Reporting Act – [Khankin v. JLR San Jose, LLC](#), No. 3:23-cv-06145 (N.D. Cal. Mar. 14, 2024) (granting furnisher’s dismissal motion)

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