

Financial Services & Title Insurance Update: Week Ending March 22, 2019

March 23, 2019

Financial Services Update

- **FDCPA / definition of "debt collector":** law firm carrying out a nonjudicial foreclosure action not a debt collector because the primary definition of a "debt collector" under sec. 1692a does not include parties who do no more than enforce security interests - [Obduskey v. McCarthy & Holthus LLP](#), No. 17-1307 (Mar. 20, 2019) (affirming dismissal)
- **FDCPA / Concurrent State Court Action:** allegedly unlawful collection of late fees after the plaintiff's mortgage was accelerated stated FDC stated FDCPA violations notwithstanding foreclosure action was still pending - [Muhammad v. Carrington Mortg. Servs., LLC](#), No. 18-22052-CIV (S.D. Fla. Mar. 19, 2019) (denying dismissal motion)
- **FDCPA / Technical Violation Insufficient:** although demand letter named merchant and not creditor to whom the debt was technically owed, violating section 1692g(a), the least sophisticated consumer would believe the merchant, not the creditor, was providing credit - [Howe v. Receivables Performance Mgmt., LLC](#), No. 2:17-cv-14167 (S.D. Fla. Mar. 21, 2019) (granting creditor's summary judgment motion)
- **TCPA / Standing:** plaintiff suffered concrete injury-in-fact sufficient under Article III to proceed with TCPA claim after receiving unsolicited fax advertisement - [Yaakov v. Educ. Testing Serv.](#), No. 13-CV-4577 (S.D.N.Y. Mar. 18, 2019)

Title Insurance Update

- **Statute of Limitations:** under Maine law, claim against title agent and insurer for mistake in encumbering unimproved parcel governed by six-year statute of limitations for civil actions and began to run when mortgagors filed adversary complaint in bankruptcy to limit mortgage; Unfair Claims Settlement Practices Act claim accrued when insurer denied claim following bankruptcy court decision - [US Bank, N.A. v. HLC Escrow, Inc.](#), No. 17-1121 (1st Cir. Mar. 18, 2019) (affirmed in part and vacated in part)
- **Standing:** real-estate developer had no standing to bring claim against Secretary of Treasury for violating the Administrative Procedure Act by refusing to declare that title insurance is not actually insurance under federal law - [Klein v. Mnuchin](#), No. 18-769 (D.D.C. Mar. 18, 2019) (granting motion to dismiss)
- **Statute of Limitations:** negligence claim against title agent under Delaware law subject to three-year statute of limitation and did not relate back to initial complaint - [Fansler v. N. Am. Title Ins. Co.](#), No. N17C-09-015 EMD (Super. Ct. Del. Mar. 19, 2019) (denying in part and granting in part motion to dismiss)
- **Professional Negligence:** insured cannot claim professional negligence against title agent because agent does not have fiduciary duty to insured; however, insured may have claim for negligent procurement of insurance coverage against title agent - [Fansler v. N. Am. Title Ins. Co.](#), No. N17C-09-015 EMD (Super. Ct. Del. Mar. 19, 2019) (denying in part and granting in part motion to dismiss)
- **Reconveyance:** title insurer's reconveyance of property based on electronically transmitted document was effective as parties agreed to conduct business electronically - [VT Holdings LLC v. First Am. Title Ins.](#), No. 20170647-CA (Ct. App. Utah Mar. 14, 2019) (affirming order granting motion to dismiss)

Related Practices

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