

Real Property, Financial Services, & Title Insurance Update: Week Ending January 24, 2020

January 30, 2020

Real Property Update

- **Quiet Title / Motion to Dismiss:** Trial court not permitted to consider or take judicial notice of amended lis pendens and partial release of mortgage that were outside the counterclaim to which a motion to dismiss was directed – [Migliazzo v. Wells Fargo Bank, N.A.](#), No. 2D18-655 (Fla. 2d DCA Jan. 24, 2020) (reversing dismissal of counterclaim of quiet title)
- **Foreclosure / Sua Sponte Dismissal:** Dismissal was procedurally improper and *Yelen v. Bankers Trust Co.*, 476 So. 2d 767 (Fla. 3d DCA 1985), was not controlling where language in due-on-sale clause differed from that in *Yelen*; due-on-sale clause did not contain language requiring voluntary transfer “by borrower,” but rather encompassed any and all transfers of the subject property – [Bank of N.Y. Mellon Corp. v. Hernandez](#), No. 3D19-328 (Fla. 3d DCA Jan. 22, 2020) (reversed and remanded)
- **Property Appraisal / Settlement Agreement:** Trial court erred in determining landowner was entitled to a reduction in property appraisal market value where conveyance and release agreement was only available to those who owned a qualifying residence before the effective date; landowner only had a concrete foundation on his property, which was not a “residence” – [Broward Cty. v. Font](#), No. 4D19-150 (Fla. 4th DCA Jan. 22, 2020) (reversed and remanded)

Financial Services

- **FDCPA / Pleading Sufficiency:** Plaintiff's second amended complaint failed to state an FDCPA claim when it failed to establish that either defendant is a debt collector beyond the assertion of vague and boilerplate allegations, and it asserted in only a vague and conclusory manner that defendants' conduct qualified as abusive and oppressive conduct without describing such conduct engaged by either defendant – [Ponthieux v. Nationstar Mortg., LLC](#), No. 2:18-cv-00608 (E.D. Cal. Jan. 21, 2020) (recommending dismissal motion be granted in part)
- **FCRA / Pleading Sufficiency:** While complaint sufficiently stated claim for defendant's negligent violation of the FCRA, it failed to state a claim for defendant's willful violation of the FCRA because it did not sufficiently plead that defendant knowingly or recklessly failed to follow reasonable procedures – [Mader v. Experian Info. Sols., LLC](#), No. 1:19-cv-03787 (S.D.N.Y. Jan. 17, 2020) (granting in part and denying in part defendant's dismissal motion)
- **ECOA:** Plaintiff did not identify any specific policy or practice by defendants, nor any adverse impact on African Americans, to support a disparate treatment claim under the ECOA – [Guy v. Auto. Ins. Co. of Hartford Conn.](#), No. 1:18-cv-02620 (E.D.N.Y. Jan. 22, 2020) (granting defendants' motions to dismiss)

Title Insurance

- No cases of interest to report.

Related Practices

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