

Real Property, Financial Services, & Title Insurance Update: Week Ending March 13, 2020

March 13, 2020

Real Property Update

- **Foreclosure / Standing:** Holder failed to prove standing to enforce note either at inception or at time of judgment because it failed to prove it had possession of original note and accompanying allonges – [Morrone v. Wilmington Savings Fund Soc’y FSB](#), No. 2D18-2347 (Fla. 2d DCA Mar. 13, 2020) (reversed and remanded)
- **Foreclosure / Redemption:** Trial court could not twice amend final judgment of foreclosure to increase redemption amount to include appellate and post-judgment attorneys’ fees and costs after borrower redeemed property – [Dawson v. Hernandez](#), No. 4D18-1588 (Fla. 4th DCA Mar. 11, 2020) (reversed and remanded)
- **Riparian Rights / Littoral Right:** Submerged landowner failed to present any evidence that upland owner’s dock was unnecessary or exceeded what was necessary to facilitate access to intercoastal waterway; thus, trial court correctly found that upland owner had a littoral right to dock – [BB Inlet Prop., LLC v. 920 N. Stanley Partners, LLC](#), No. 4D18-3765 (Fla. 4th DCA Mar. 11, 2020) (affirmed)
- **Riparian Rights / Public Trust Doctrine:** Upland owner had qualified right to construct or retain dock because owner complied with applicable regulations as part of the public trust doctrine; evidence established that extended dock was built in compliance with existing regulations – [BB Inlet Prop., LLC v. 920 N. Stanley Partners, LLC](#), No. 4D18-3765 (Fla. 4th DCA Mar. 11, 2020) (affirmed)
- **Landlord-Tenant / Duration:** Lease did not include specific end term, rendering duration of lease indefinite and terminable at will, and, thus, tenants were within their rights to terminate lease – [Waveblast Watersports II Inc. v. UH-Pompano, LLC](#), No. 4D18-3180 (Fla. 4th Mar. 11, 2020) (affirming summary judgment)

- **Foreclosure / Mortgage Superiority:** Bank was not required to prove that its mortgage was superior to interest of property owner – [Bank of Am., N.A. v. Green Emerald Homes, LLC](#), No. 5D18-801 (Fla. 5th DCA Mar. 13, 2020) (reversing involuntary dismissal)

Financial Services Update

- **FCCPA / FCRA Preemption:** Plaintiff’s FCCPA claims, alleging disclosures of false information to CRAs, were expressly preempted by the FCRA – [Rabelo v. Equifax Info. Servs., LLC](#), No. 2:19-cv-00849 (M.D. Fla. Mar. 10, 2020) (granting dismissal with leave to amend)
- **TCPA / Stay Proceedings:** Staying proceeding in light of Supreme Court’s upcoming review of TCPA issues in [Barr v. American Association of Political Consultants Inc.](#) – [Wright v. eXp Realty, LLC](#), No. 6:18-cv-01851 (M.D. Fla. Feb. 7, 2020) (granting motion to stay)
- **FCRA / Consumer Report:** Plaintiff failed to adequately allege that the report sent by one of the defendants was a consumer report – [Skiles v. Tesla, Inc.](#), No. 3:17-cv-05434 (N.D. Cal. Feb. 19, 2020) (granting dismissal motion without prejudice)
- **FDCPA / Principal Purpose:** Entity that buys and profits from consumer debts and otherwise meets the “principal purpose” definition of debt collector cannot avoid liability under the FDCPA merely by hiring a third party to perform its debt collection activities – [McAdory v. M.N.S. & Assocs., LLC](#), No. 18-35923 (9th Cir. Mar. 9, 2020).

Title Insurance Update

- **Policy Exception:** Where insured sought coverage and defense for dispute with County over ordinance prohibiting vehicular traffic during winter months on road located on insured’s property, court held title insurers contractually exempted from providing coverage because public easement for road not shown in public records – [Munden v. Stewart Title Guar. Co.](#), No. 4:19-cv-00112 (D. Id. Mar. 11, 2020) (granting motion to dismiss and motion for summary judgment)

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