

Real Property & Title Insurance Update: Week Ending July 28 & August 4, 2017

August 07, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Redemption:** foreclosure sale conducted without knowledge of bankruptcy affirmed, but trial court orders denying mortgagor opportunity to redeem property before certificate of sale actually filed reversed and remanded – [Coastwide Services, LLC v. Goldberg](#), No. 3D17-1162 (Fla. 3d DCA August 2, 2017) (affirmed in part, and reversed and remanded for further proceedings)
- **Foreclosure/Damages:** testimony of witness for lender, combined with payment history and note, provided competent, substantial evidence of fixed interest rate and escrow disbursements – [Fogarty v. Nationstar Mortg. LLC.](#), No. 5D16-3193 (Fla. 5th DCA Aug. 4, 2017) (affirmed in part, reversed in part, and remanded with instructions)
- **Foreclosure:** Section 48.23(1)(d), Florida Statutes, only precludes enforcement of liens unrecorded at time lis pendens recorded and does not deprive foreclosing first mortgagee of subject matter jurisdiction where homeowners association has previously filed foreclosure action against homeowner and recorded lis pendens - [Ditech Financial LLC v. White](#), Case No. 4D16-3213 (Fla. 4th DCA July 26, 2017) (reversed and remanded)
- **Foreclosure:** where foreclosing bank fails to properly admit acceleration letter into evidence and acceleration letter is condition precedent to filing foreclosure action, defendant entitled to final judgment of involuntary dismissal - [Delong v. Lakeview Loan Servicing, LLC et al.](#), Case No. 5D16-903 (Fla. 5th DCA July 28, 2017) (reversed and remanded)

CONSUMER FINANCE UPDATE

- **FDCPA:** dismissing FDCPA claim because property management company that collected rent and late fees did not fall within statute's narrow definition of "debt collector" – [Yatooma v. OP Property Mgmt LP](#), Case No. 2:17-cv-02645 ODW (C.D. Cal. July 20, 2017).
- **FDCPA:** dismissing FDCPA based on collector's response to debtor's motion to dismiss its collection action because response was protected "pleading" within meaning of statute – [Lambe v. Allgate Financial, LLC](#), Case No. 16-cv-24407 (S.D. Fla. July 20, 2017).
- **TCPA:** dismissing junk fax class action where allegations failed to specify what role, if any, each defendant played in sending fax advertisement – [Scoma Chiropractic, P.A. v. Jackson Hewitt Inc.](#), (M.D. Fla. July 25, 2017).
- **FDCPA and TILA:** denying motion to dismiss FDCPA and TILA claims where borrower alleged it had not been late with its payments and that servicer improperly charged late fees, finding servicer's argument that the note and mortgage, which were not attached to complaint, specifically authorized late fees insufficient to overcome well plead allegations in complaint – [Rios v. Rushmore Loan Mgmt. Svcs. LLC](#), Case No. 16-81973 (S.D. Fla. July 24, 2017).
- **FCRA:** denying motion to dismiss FCRA claim where plaintiff alleged that mortgage lender was negligent in failing to investigate and discover that mortgage debt had been forgiven as a result of short sale before reporting negative information to credit reporting agencies – [Owens-Benniefield v. Nationstar Mortgage LLC](#), Case No. 8:17-cv-540 (M.D. Fla. July 25, 2017).

TITLE INSURANCE UPDATE

- **Escrow Agents:** title agent holding construction escrow owed no duty to go beyond requirements of escrow agreement and conduct "informal inspections" of problem project – [231 W. Scott, LLC v. Lakeside Bank](#), 2017 IL App (1st) 161131, Case No. 1-16-1131 (Ill. 1st Dist. June 28, 2017).
- **Negligent Search:** holding that insured customer of title searcher could recover in a negligent search action the fees it incurred in collateral litigation they had to file to defend their title, but that award should be reduced by amount of fee award satisfied by opposing party in that litigation – [Eastern Shore Title Co. v. Ochse](#), 160 A.3d 1238 (Md. App. May 31, 2017).
- **Policy Coverage and Bad Faith:** reversing summary judgment to title insurer where policy's meets and bounds description covered only one lot, but tax parcel ID including both created reasonable expectation of coverage, and negligence in preparing deed, as well as bad faith in claims handling were alleged – [Michael v. Stock](#), Case No. 1229 EDA 2016 (Pa. Sup. April 11, 2017).

- **Policy Coverage:** granting summary judgment to title insurer where insured lender had conveyed property without warranty after non-judicial foreclosure to third party who then discovered a senior lien on the property – [Hovannisian v. First American Title Ins. Co.](#), Case No. F072789 (Cal. App. 1st Dist. July 25, 2017).

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