

Real Property, Financial Services, & Title Insurance Update: Week Ending November 16, 2018

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Real Property Update

- **Derivative v. Direct Action / Standing:** individual member of LLC not entitled to sue title company for breach of fiduciary duty because right to sue belonged to LLC, where LLC suffered the direct harm and harm to individual was indirect - [Home Title Co. of Md., Inc., v. LaSalla](#), No. 2D17-273 (Fla. 2d DCA Nov. 16, 2018) (reversed and remanded)
- **Foreclosure / Leave to Amend:** court abused its discretion in denying borrower an opportunity to amend his answer and affirmative defenses in seven-year-old case because the "justice factor" outweighed the prejudice to opposing party - [Sorenson v. Bank of New York Mellon](#), No. 2D16-273 (Fla. 2d DCA Nov. 16, 2018) (reversed and remanded)
- **Annexation Ordinance / Time Limitation:** appeal regarding a municipal annexation must be filed within thirty days of the passage of annexation ordinance - [The City of Palm Beach Gardens v. Oxenvad](#), No. 4D18-1758 (Fla. 4th DCA Nov. 14, 2018) (petition granted)
- **Foreclosure / Final Judgement:** borrower's actual knowledge of final judgment may control whether the summary judgment is void or voidable, and a summary judgment may be set aside under Florida Rule of Civil Procedure 1.540 outside of the one-year limitation - [Richard v. Bank of America, N.A.](#), No. 4D18-1581 (Fla. 4th DCA Nov. 14, 2018) (reversed and remanded).

Financial Services Update

- **TCPA / Consent:** because plaintiffs gave consent to receive advertising faxes as part of approved supplier program, no reasonable factfinder could determine that faxes were unsolicited to support a violation of the TCPA - [Gorss Motels, Inc. v. Safemark Sys., LP](#), No. 6:16-cv-1638-Orl-31DCI (M.D. Fla. Nov. 15, 2018) (granting summary judgment for defendant)
- **FDCPA / Dismissal:** debt collector sufficiently identified creditor even though it did not use the word "creditor," and debtor could be expected to connect the dots on a collection letter that lists name "Medical Center Enterprise" next to an outstanding balance - [Lait v. Med. Data Sys., Inc.](#), No. 18-12255 (11th Cir. Nov. 9, 2018) (affirming dismissal for failure to state claim)

Title Insurance Update

- **Discovery:** title insurer served by plaintiff with subpoena for documents is entitled to costs from plaintiff pursuant to NY statute in order to defray cost of searching and producing ESI requested but not in advance of making the production - [Demaio v. World Savings Bank](#), 2018 NY Slip Op 32817 (NY Sup. Ct. Oct. 24, 2018)(order granting motion for protective order in part)
- **Misrepresentation:** claim against title insurer by third party for fraudulent misrepresentation based on omission of exception from title report issued to purchaser relating to third-party's lawsuit against seller failed to state a cause of action because third-party was not in privity with title insurer and not entitled to rely on title report - [Demaio v. World Savings Bank](#), 2018 NY Slip Op 32817 (NY App Oct. 24, 2018) (order dismissing third-party complaint)

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