

Real Property, Financial Services, & Title Insurance Update: Week Ending July 27, 2018

July 28, 2018

Real Property Update

- **Foreclosure/Statute of Limitations & Res Judicata:** trial court erred in finding that bank's foreclosure action was barred by statute of limitations and res judicata – U.S. Bank Nat'l Ass'n, etc. v. Amaya, No. 3D17-576 (Fla. 3d DCA July 25, 2018) (reversed and remanded)
- **Foreclosure/Statute of Limitations:** trial court incorrectly determined that bank's second foreclosure action was barred by five-year statute of limitations stemming from prior acceleration – U.S. Bank, N.A., as Trustee, etc. v. Ramirez, No. 3D17-1402 (Fla. 3d DCA July 25, 2018) (reversed and remanded)
- **Foreclosure/Redemption:** borrower properly exercised her right of redemption as outlined in final judgment of foreclosure by reinstating and curing default on subject loan on same day of foreclosure sale, which was prior to issuance of certificate of sale – Nationstar Mortg. LLC, etc. v. Roque, No. 3D18-0613 (Fla. 3d DCA July 25, 2018) (reversed and remanded)
- **Foreclosure/Remedies:** trial court incorrectly entered two judgments—one for money damages and one for foreclosure—that allowed bank to simultaneously execute on money judgment and to foreclose – Schneider v. First Am. Bank, No. 4D17-2239 (Fla. 4th DCA July 25, 2018) (reversing only as to foreclosure judgment)
- **Foreclosure/Statute of Limitations:** default date asserted in bank's foreclosure complaint was within five years prior to bank's filing of its complaint, and, therefore, bank's action was not barred by statute of limitations – Deutsche Bank Nat'l Trust Co., as Trustee v. Green, No. 5D17-710 (Fla. 5th DCA July 27, 2018) (reversed and remanded)

Financial Services Update

- **RESPA:** borrower adequately alleged claim under RESPA for failure to respond to QWR, borrower not entitled to TRO preventing foreclosure sale without showing actual damages - *Sparks-Magdaluyo v. New Penn Fin., LLC*, Case No. 16-cv-04223 (N.D. Cal. July 23, 2018) (denying application for TRO).
- **TCPA:** the term “capacity” in TCPA’s definition of autodialer refers to device’s current ability to randomly or sequentially generate telephone numbers, absent any modifications to device’s hardware or software - *King v. Time Warner Cable Inc.*, 894 F.3d 473 (2d Cir. June 29, 2018) (vacating partial summary judgment for customer and remanding because record was insufficient to determine as a matter of law whether Time Warner’s system fit the definition of an autodialer).
- **FDCPA:** identification of servicer as creditor in foreclosure complaint was not a material misrepresentation under FDCPA because it did not frustrate debtor’s ability to respond to or dispute collection nor did it mislead the debtor as to the nature and legal status of the underlying debt. *Cohen v. Rosicki, Rosicki & Assocs., P.C.*, Case No. 17-950-cv (2d Cir. July 23, 2018) (affirming dismissal of putative class action).

Title Insurance Update

- **Date of Loss:** pursuant to Utah Code, the date of loss under a lender’s title insurance policy is the date of the inception of the loss, which is deemed to be the date of the invalidation of lender’s interest in the property insured under the policy and not the date that the insured was served with a suit challenging title – *Park v. First American Title Ins. Co.*, Case No. 17-4125 (10th Cir. Jul. 25, 2018)(reversing dismissal of suit and remanding for further proceedings)

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