

Real Property, Financial Services, & Title Insurance Update: Week Ending April 19, 2019

April 20, 2019

Real Property Update

- **Special Tax District Bond Validation:** hospital center special tax district could not validate bonds intended to finance the construction of a hospital outside the geographic boundaries established by the special act - [Halifax Hospital Medical Center, etc. v. State of Florida](#), No. SC18-683 (Fla. Apr.18, 2019) (affirmed)
- **Lease / Advanced Liability Waiver:** tenant waived right to recover from landlord damages on theory of negligence relating to maintenance of a picket fence where residential lease required tenant independently inspect the property in advance, tenant raised no complaints concerning the picket fence prior to taking possession, tenant accepted possession "as is", and tenant broadly "waive[d] any claims, rights or actions against the Landlord, Agent or other person or entity for any alleged failure to disclose any defects in the premises" - [Casasanta v. Sailshare 296 LLC](#), No. 1D17-4862 (Fla. 1st DCA Apr. 16, 2019) (affirmed)
- **Replevin:** trial court erred by granting summary judgment of replevin in favor of ex-boyfriend where evidence did not overcome ex-girlfriend's "gift" defense, and there remained a question of fact for the trier to adjudicate - [Maguire-Ress v. Stettner](#), No. 4D18-2742 (Fla. 4th DCA Apr. 17, 2019) (reversed and remanded)
- **Attorneys' Fees / 57.105(7):** party entitled to recover attorneys' fees incurred defending against contract claims asserted so long as the claim asserted is within the scope of the attorneys' fee provision, and contract is not unenforceable between parties - [CalAtlantic Group, Inc. v. Dau](#), No. 5D18-1281 (Fla. 5th DCA Apr. 18, 2019) (reversed and remanded)

Financial Services Update

- **FCRA:** genuine issue of fact existed as to whether Borrowers were entitled to emotional distress and punitive damages stemming from Bank's failure to accurately report the status of a loan to credit bureaus which constituted a willful violation of the FCRA - [Marchisio v. Carrington Mortg. Servs., LLC](#), 919 F.3d 1288 (11th Cir. 2019)
- **FCCPA / Arbitration of Claim:** While a bankruptcy discharge will discharge the debtor's personal liability as to his debts, it does not discharge the entire agreement between the parties, including an arbitration provision. Regardless of the discharge, an FCCPA claim is not subject to arbitration where the claim does not have a significant relationship to the contract governing the parties - [Verizon Wireless Personal Commc'ns, LP v. Bateman](#), 264 So. 3d 345 (Fla. 2d DCA 2019)

Title Insurance Update

- **Agent Liability:** insured owner's third-party claims in foreclosure action against title agent for the failure to discover a zoning ordinance that precluded development of the property barred by res judicata where insured had filed prior actions based on the same closing, one of which had resulted in a final judgment, even though the insured now argued for the first time that "title insurance" is not insurance - [First NBC Bank v. Levy Gardens Partners 2007, LP](#), No. 17-6652 (La. E.D. Apr. 12, 2019) (order granting motion to dismiss third party complaint based on res judicata)
- **Policy Liability:** claim on lender policy allegedly showing no liens on property by owner who short-sold and then re-acquired property was barred by statute of limitation where owner had constructive notice of second lien in 2009, even though the owner claimed not to have title to the property or actual knowledge of the second lien until 2016 - [Han Realty Corp. v. Bank of America](#), No. B286628 (Cal. App. Apr. 15, 2019) (opinion affirming judgment sustaining demurrers)

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