CARLTON FIELDS

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)

Related Practices

Real Property Litigation
Title Insurance
Consumer Finance

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.