

Real Property, Financial Services, & Title Insurance Update: Week Ending August 23, 2019

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Real Property Update

- **Foreclosure Sale:** borrowers failed to allege adequate equitable factors and make proper showing to justify setting aside foreclosure sale, but instead re-litigate issues determined in underlying foreclosure judgment - [Aparicio v. Deutsche Bank Nat'l Trust Co., etc.](#), No. 3D19-0399 (Fla. 3d DCA Aug. 21, 2019) (affirming denial of motion to set aside sale)
- **Partition / Disbursement of Proceeds:** record lacked sufficient support for trial court's equal distribution of proceeds to the parties, which occurred without evidentiary hearing being held to determine appropriate credits or offsets - [Patel v. Patel](#), No. 5D18-2926 (Fla. 5th DCA Aug. 23, 2019) (reversing and remanding)

Financial Services Update

- **TILA / Extension of Credit / Written Credit Agreements:** medical group's arrangement for patients to pay deductible in installments following surgery constituted "extension of credit" under TILA and Regulation Z; however, emails between parties did not constitute "written credit agreement" sufficient to state a claim - [Wolfington v. Reconstructive Orthopaedic Assocs.](#), Nos. 17-3500 & 18-1182 (3d Cir. Aug. 20, 2019) (affirming judgment on the pleadings)
- **RESPA / "Dual Tracking" Regulation:** relevant date for determining whether plaintiff has complied with RESPA's "Dual Tracking" regulation is the scheduled date of foreclosure sale, not the date the sale occurs - [Rellstab v. Ditech Fin. LLC](#), No. 19-40038-TSH (D. Mass. Aug. 19, 2019) (granting motion to dismiss)

- **TCPA / Pleading Sufficiency / ATDS:** plaintiff complaint's sufficiently alleged defendant used ATDS where it described "telltale" pause after plaintiff picked up each call to Plaintiff's cell phone - [Hamilton v. Loancare, LLC](#), No. CV-19-00717-PHX-JJT (D. Ariz. Aug. 20, 2019) (denying motion to dismiss in part)
- **TCPA / Pleading Sufficiency / ATDS:** plaintiff's complaint sufficiently alleged defendant used an ATDS where it included the content of the text message plaintiff received, which was generic and ended with the instruction to "text STOP to end" - [Pascal v. Concentra, Inc.](#), No. 19-cv-02559-JCS (N.D. Cal. Aug. 20, 2019) (denying motion to dismiss in part)
- **FDCPA:** applying "common sense inquiry" to conclude that letter sent to debtor identifying deficiency balance and including disclaimer that the communication came from a debt collector was made in connection with the collection of a debt, despite disclaimer saying collector was waiving the right to collect the unpaid deficiency balance and was not going to pursue debtor for any portion of the deficiency balance - [Hamilton v. Loancare, LLC](#), No. 19 C 0554 (N.D. Ill. Aug. 22, 2019) (denying motion to dismiss)

Title Insurance Update

- **Choice of Law:** applying Section 188 of the Restatement of Conflicts of Law, the Delaware Court found Michigan law applied because (i) the parties reasonable expectations at the time the title insurance policy was issued would have been that Michigan law would apply and (ii) the subject matter of the policy, a building in Detroit, is located in Michigan - [Buhl Building, L.L.C. v. Commonwealth Land Title Ins. Co.](#), No. N17C-03-093 EMD CCLD (Super. Ct. Del. Aug. 19, 2019) (order granting motion to dismiss)
- **Breach of Policy:** parent company of title insurer who issues a title insurance policy is not a party to the title insurance policy and thus is not a proper party to a breach of policy count - [Buhl Building, L.L.C. v. Commonwealth Land Title Ins. Co.](#), Case No. N17C-03-093 EMD CCLD (Super. Ct. Del. Aug. 19, 2019) (order granting motion to dismiss)
- **Bad Faith:** Michigan law does not recognize bad faith breach of contract and punitive damages - [Buhl Building, L.L.C. v. Commonwealth Land Title Ins. Co.](#), No. N17C-03-093 EMD CCLD (Super. Ct. Del. Aug. 19, 2019) (order granting motion to dismiss)
- **Title Agent:** title agent had a duty to provide an accurate legal description and breached its duty by preparing an erroneous description - [PBRELF I, LLC v. Stewart Title of Spokane, LLC](#), No. 17-2-00846-4 (Super. Ct. Wash. June 28, 2019) (order granting motion for summary judgment) (publicly available copy of the order not available)

- **Bad Faith:** title insurer acted in bad faith by refusing to provide coverage for mechanics liens, delaying communication to insured for some seven months without explanation, and failed to act in a reasonably diligent manner - PBRELF I, LLC v. Stewart Title of Spokane, LLC, No. 17-2-00846-4 (Super. Ct. Wash. June 28, 2019) (order granting motion for summary judgment) (publically available copy of the order not available)

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