

Real Property, Financial Services, & Title Insurance Update: July 22 - August 9, 2019

August 09, 2019

Real Property Update

- **Quiet Title / Extinguishment:** mortgage merged and ceased to be an encumbrance when the mortgage on land and the equity of redemption in the same land become united in the same person - [Young Land USA, Inc. v. Credo LLC](#), No. 3D18-2146 (Fla. 3d DCA Aug. 7, 2019) (affirming summary judgment)
- **Foreclosure / Standing:** allegation in operative complaint that plaintiff held the blank indorsed note, and certification of possession of the original note, were sufficient to illustrate standing as a holder to overcome borrower's motion to dismiss - [Wells Fargo Bank, N.A., as Trustee v. Stephenson](#), No. 5D18-733 (Fla. 5th DCA Aug. 2, 2019)

Financial Services Update

- **FDUTPA / Standing:** plaintiffs in data breach class action satisfied standing requirements to get past motion to dismiss where they pleaded that they spent time disputing fraudulent charges and lost the ability to accrue cash back or point rewards when replacing compromised cards, even where there were no monetary damages; plaintiffs who claimed only future injuries as increased risk of future harm but no actual injuries would be dismissed - [In re Brinker Data Incident Litig.](#), No. 3:18-cv-686 (M.D. Fla. Aug. 1, 2019) (granting in part and denying in part motion to dismiss)
- **TCPA / Solicited-Fax Rule:** solicited-fax rule is unlawful, consistent with D.C. Cir., and faxes did not violate TCPA for failing to include opt-out notices because the recipient provided prior express permission to receive them - [Gorss Motels, Inc. v. Safemark Sys., LP](#), Case No. 18-12511 (11th Cir. July 26, 2019) (affirming summary judgment in putative class action)

- **Deceptive Unfair Trade Practices / Misrepresenting Scope of Breach:** allegations that entity who suffered breach continues to make empty promises to patients that it will secure their information fails, without more, to support claim for injunctive relief under UDTPA - [Fox v. Iowa Health Sys.](#), No. 18-cv-327-JDP (W.D. Wisc. July 25, 2019) (dismissing some claims for failure to state a claim)

Title Insurance Update

- **Title Insurance Coverage:** where buyer did not obtain a survey, and the policy's survey exception was thus not deleted, title insurer had no duty to defend litigation based on a five inch encroachment that would have been disclosed by an accurate survey - [631 N. Broad Street, LP v. Commonwealth Land Title Ins. Co.](#), No. 18-3094 (3d Cir. July 26, 2019) (affirming summary judgment)

Related Practices

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