

Real Property, Financial Services, & Title Insurance Update: Week Ending February 8, 2019

February 09, 2019

Real Property Update

- **Homestead:** injunction for municipal violations, which prevented a spouse from returning to the property, did not destroy or "abandon" homestead protections (preventing one spouse from selling the property without the signature of the other spouse) - [Yost-Rudge v. A to Z Properties](#), No. 4D17-3204 (Fla. 4th DCA Feb. 6, 2019) (reversed and remanded)
- **Necessary Party:** person having an interest in the subject property is a necessary party to a lawsuit regarding the proper ownership of said property - [Chaudhry v. Pedersen](#), No. 5D18-709 (Fla. 5th DCA Feb. 8, 2019) (reversed and remanded)
- **Landlord-Tenant / Subrogation:** using the "case-by-case" approach, tenant was not an implied co-insured under landlord's insurance policy, thus permitting landlord's insurer to proceed with subrogation action against tenant - [Zurich Am. Ins. Co. v. Puccini, LLC](#), No. 3D17-690 (Fla. 3rd DCA Feb. 6, 2019) (reversed and remanded)

Financial Services Update

- **TCPA / Pleading Requirements:** rejecting argument amended complaint should be dismissed because plaintiff did not provide details about the technology used to make the alleged calls, and concluding the allegations created a reasonable inference an ATDS was used where plaintiff alleged receiving an automated message as well as a text message with generic content - [Battaglia v. Quicken Loans, Inc.](#), No. 18-CV-1104 (W.D.N.Y. Feb. 4, 2019).

- **FDCPA / Representation in Collection Letter:** dismissing putative class action alleging debt collector's letter violated the FDCPA where it stated "CHARGES OR FEES: \$0.00," because plaintiffs' interpretation that language included any charges or fees that had accrued since the account's inception was unreasonable under the least sophisticated consumer standard and the statement was not a misrepresentation under § 1692e - [Cole v. Stephen Einstein & Assocs., P.C.](#), No. 6:18-cv-06230 (W.D.N.Y. Feb. 5, 2019)
- **FDCPA / Mortgage Statements:** dismissing complaint after concluding notice and cure provisions of mortgage applied to plaintiff's claims against loan servicer for mortgage statements that threatened to impose late fees, as plaintiff's statutory claim is based on actions taken pursuant to the mortgage - [Rodriguez v. Rushmore Loan Mgmt. Servs., LLC](#), No. 18-cv-1015 (N.D. Ill. Feb. 4, 2019)
- **FDCPA / Identity of Creditor:** dismissing putative class action that alleged collection letter violated 1692g, 1692e, 1692d and 1692f by including the names of two entities, because the letter twice identified one of the names as the creditor and made clear the second name identified the location where services were rendered - [Worley v. AR Resources, Inc.](#), No. 4:18-cv-1409 (E.D. Mo. Feb. 7, 2019).

Title Insurance Update

- **Actual loss:** the term "actual loss" is not so clear and unambiguous that the court will accept the title insurer's interpretation as a matter of law or will be rejected by the jury as an issue of fact, particularly any ambiguity in the terms of an insurance policy is construed in favor of the insured - [Wooden v. Perez](#), No. CV-17 6023554 S (Conn. Sup. Ct. Jan. 10, 2019) (denying insurer's motion to strike complaint; unpublished opinion)

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