

Real Property, Financial Services, & Title Insurance Update: Week Ending July 5, 2019

July 05, 2019

Real Property Update

- **Landlord-Tenant:** rider to a lease, containing clear and unambiguous language, controlled over the terms in the lease and limited the increase in the operating expenses charged to the tenant by the fixed amount of 3 percent - [Dezer Intracoastal Mall, LLC v. Seahorse Grill, LLC](#), No. 3D18-88 (Fla. 3d DCA July 3, 2019) (affirmed).
- **Foreclosure / Reverse Mortgage:** lender cannot foreclose under a reverse mortgage until both co-borrowers have passed away even if the surviving spouse only signed the mortgage, but not the promissory note for the loan - [Davis v. OneWest Bank, FSB](#), No. 3D18-493 (Fla. 3d DCA July 3, 2019) (reversed and remanded).
- **Foreclosure:** case involuntarily dismissed where lender based its case at trial on the subject note and a modification, yet the operative complaint neither mentioned nor attached the modification - [Morales v. Fifth Third Bank](#), No. 4D18-3145 (Fla. 4th DCA July 3, 2019) (reversed and remanded).

Financial Services Update

- **RESPA / 1024.41(g) / Modifying Foreclosure Sale Date:** motion to reset foreclosure sale date after loan modification is not a violation of RESPA - [Landau v. Roundpoint Mortg. Servicing Corp.](#), No. 17-11151 (11th Cir. June 11, 2019) (affirming entry of order dismissing claims with prejudice).
- **TILA / Statute of Limitations:** TILA statute of limitations for the recovery of monetary damages is one year from the date the transaction was consummated - [Dixon v. Green Tree Servicing, LLC](#), No. 9:19-cv-80022 (S.D. Fla. July 3, 2019).

- **FDCPA / 1692(d)(5) / Statute of Limitations:** applying the "continuing violation" doctrine to an FDCPA claim - [Muzyka v. Rash Curtis & Assocs.](#), No. 2:18-cv-01097 (E.D. Cal. July 3, 2019) ("If there is a pattern of allegedly unlawful conduct, a suit is timely filed if it is brought 'within one year of the most recent date on which the defendant is alleged to have violated the FDCPA.'") (quoting [Padilla v. Payco Gen. Am. Credits, Inc.](#), 161 F. Supp. 2d 264, 273 (S.D.N.Y. 2001)).

Title Insurance Update

- **Title Insurance / Corporate Veil:** plaintiff not permitted to take evidence deposition of title agency's president to use at trial as plaintiff failed to disclose her as a witness, failed to show that her testimony was critical to plaintiff's case, and permitting the deposition would have been prejudicial to defendant; title agency's vice president not personally liable where he did not actively participate in, or have sufficient knowledge of, plaintiff's transaction, and plaintiff failed to show his actions pierced the corporate veil - [Lopez v. Shaykin](#), No. 1-18-1044 (Ill. App. Ct. June 25, 2019) (affirmed)
- **Equitable Subrogation:** plaintiff was not entitled to equitable subrogation where doing so would have an unjust result on the owner of property that did not know of, or agree to, plaintiff's payoff to lender and plaintiff voluntarily paid off the mortgage - [Paliatka v. RJEM, LLC](#), No. 1-18-2436 (Ill. App. Ct. June 28, 2019) (affirming motion to dismiss)
- **Equitable Subrogation:** assignee not entitled to foreclose on mortgaged property under doctrine of equitable subrogation where the property was transferred to a trust before purported mortgagor executed a reverse mortgage, a quitclaim deed reflecting purported mortgagor's life estate interest in the property was validly recorded, and assignee's predecessor had actual notice that the mortgage only had a life estate interest in the property - [Nationstar Mortg. LLC v. Adee](#), No. 527518 (N.Y. App. Div. May 16, 2019) (affirmed)

Related Practices

[Real Property Litigation](#)

[Consumer Finance](#)

[Title Insurance](#)

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.