

Real Property & Financial Services Update: Week Ending June 14, 2019

June 15, 2019

Real Property Update

- **Foreclosure / Business Records / Hearsay:** trial court abused its discretion in excluding collection notes into evidence where witness sufficiently laid predicate for admissibility of these records - [Green Tree Servicing, LLC v. Simms](#), No. 5D17-725 (Fla. 5th DCA June 14, 2019) (reversed and remanded)
- **Foreclosure / Standing / Attorney's Fees:** borrower not entitled to attorney's fees after it prevailed on standing defense - [Deutsche Bank Trust Co. Americas as Trustee Rali 2006-QS6 v. Page](#), No. 4D18-816 (Fla. 4th DCA June 12, 2019) (reversed and certifying conflict)
- **Breach of Contract / Oral Modification:** no oral modification clause was enforceable and written contract was not modified by alleged oral agreement where parties never acted on the alleged oral modification - [Perera v. Diolife LLC](#), No. 4D18-892 (Fla. 4th DCA June 12, 2019) (reversed and remanded)
- **Foreclosure / Removal:** trial court did not have jurisdiction to enter a nonfinal order (overruling objection to sale, denying motion to set aside certificate of sale, and directing clerk to court to issue certificate of title to lender) while case was effectively removed to federal court - [Ricci v. Ventures Trust 2013-I-H-R By MCM Capital Partners, LLC](#), No. 4D18-1111 (Fla. 4th DCA June 12, 2019) (reversed and remanded)

Financial Services Update

- **RESPA:** motion to reschedule foreclosure sale filed during borrower's trial loan modification plan did not violate RESPA because lender was seeking to postpone previously scheduled sale during modification period - [Landau v. RoundPoint Mortg. Serv. Corp.](#), No. 17-11151 (11th Cir. June 11, 2019) (affirming dismissal of action)
- **TCPA:** federal debt collection exemption to TCPA is unconstitutional content-based restriction that must be severed as violative of the First Amendment - [Duguid v. Facebook, Inc.](#), No. 17-15320 (9th Cir. June 13, 2019) (reversing dismissal of action)
- **FCRA:** debtors who claimed that credit reports were inconsistent with their Chapter 13 bankruptcy plans did not allege actual or material risk of harm and thus lacked standing to bring FCRA claims - [Jaras v. Equifax Inc.](#), No. 17-15201 (9th Cir. 2019).
- **FDCPA:** debt collection notice violated FDCPA because it failed to advise consumers that the debt was still accruing interest and/or fees - [Cortez v. Foster & Garbus, LLP](#), No. 1:17-cv-06501 (E.D.N.Y. June 12, 2019) (entering summary judgment for plaintiff on liability)

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