

Real Property, Financial Services, & Title Insurance Update: Week Ending June 7, 2019

June 08, 2019

Real Property Update

- **Foreclosure / Standing:** owner of property subject to mortgage at the time the complaint and lis pendens were filed had standing to dispute legal sufficiency of proof of amount due where owner was named as a defendant, even though owner was not party to the note or mortgage - [Green Emerald Homes, LLC v. 21st Mortg. Corp.](#), No. 2D17-2192 (Fla. 2d DCA June 7, 2019) (reversing and remanding involuntary dismissal)
- **Foreclosure / Jury Trial Waiver:** loan servicer, which was also the holder of note and loan owner's agent, had sufficient legal basis to enforce jury trial waiver provision of mortgage - [Goodenow v. Nationstar Mortg., LLC](#), No. 3D18-1480 (Fla. 3d DCA June 5, 2019) (affirming final judgment of foreclosure)
- **Foreclosure / Standing / Indispensable Party:** non-party in trial court was a "stranger to the record" and therefore lacked standing to appeal; trial court properly rejected argument, made for the first time at trial, that bank failed to join a trust as an indispensable party where the only evidence was the borrower's own conclusory testimony that the property was placed in the trust - [Turkell-White v. Wells Fargo Bank, N.A.](#), No. 4D18-1402 (Fla. 4th DCA June 5, 2019) (dismissing in part, affirming in part)
- **Attorney's Fees / Costs:** borrower preserved argument to tax costs when he specifically mentioned Florida Rule of Civil Procedure 1.420 in his motion to tax costs after trial court entered order of involuntary dismissal - [Fassy v. Bank of New York Mellon](#), No. 4D18-1548 (Fla. 4th DCA June 5, 2019) (affirming in part, reversing in part)

- **Foreclosure / Payment History:** bank was not required to enter into evidence entire payment history in order to proceed with foreclosure action; span of payment history required will depend on damages sought - [Deutsche Bank Trust Co. Americas, as Trustee v. JB Invs. Realty, LLC](#), No. 4D18-3240 (Fla. 4th DCA June 5, 2019) (reversing and remanding)

Financial Services Update

- **FDCPA / 1692d / Harassing Conduct:** filing of lawsuit on underlying debt is not harassment - [Middlebrooks v. Sacor Fin'l, Inc.](#), No. 18-13770 (11th Cir. May 30, 2019) (affirming entry of summary judgment)
- **TILA / Refinancing:** a loan modification is not "refinancing" that renews TILA statute of limitations - [Lucore v. Wells Fargo Bank, N.A.](#), 3:18-cv-02382-L-MDD (S.D. Cal. June 5, 2019) (granting dismissal motion)

Title Insurance Update

- **Title Insurance Coverage:** a restrictive covenant is a title defect covered by the policy, but this covenant was excluded by Section 3(a) because the covenant was specifically disclosed to the insured in the purchase contract - [50 Clarkson Partners LLC v. Old Republic Nat'l Title Ins. Co.](#), No. 516966/18 (N.Y. Sup. Ct. June 3, 2019) (granting dismissal)

Related Practices

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