

Real Property, Financial Services, & Title Insurance Update: Week Ending May 17, 2019

May 17, 2019

Real Property Update

- **Sanctions / Dismissal:** trial court abused discretion in dismissing bank's foreclosure action; record established bank complied with discovery orders on which the motion for dismissal/sanctions was based – [The Bank of N.Y. Mellon, as Trustee v. Johnson](#), No. 1D18-3656 (Fla. 1st DCA May 13, 2019) (reversing dismissal)
- **Record Title Holder:** foreclosure judgment was void for failure of the plaintiff to join the only record title owner of the property and, as a result, the lis pendens had no effect on unrecorded property interests – [FL Homes 1 LLC v. Toula Kokolis, as Trustee](#), No. 4D18-2709 (Fla. 4th DCA May 15, 2019) (reversing summary judgment)

Title Insurance Cases

- **Equitable Subrogation:** refinancing lender was entitled to equitable subrogation despite arguable negligence in failing to ensure that prior revolving line of credit was fully closed and released – [Bank of Am., N.A. v. Barnes Hill, LLC](#), No. 16-cv-11583-DJC, 2019 WL 2085996 (D. Mass. May 13, 2019) (granting summary judgment)
- **Title Insurance Damages:** insured was entitled only to diminution in value for lack of legal access, as opposed to cost of obtaining preferred route of access – [BJD Properties, LLC v. Stewart Title Guar. Co.](#), No. 16-1757 (W.D. La. Mar. 29, 2019) (granting and denying in part motions for summary judgment)

Financial Services Update

- **RESPA / ECOA:** *pro se* plaintiff sufficiently alleged ECOA claim, alleging she was discriminated against on the basis of marital status, and for RESPA, claiming lender failed to provide a written response to loan application – *Ho v. Wells Fargo Bank, N.A.*, No. 15-81522-civ (S.D. Fla. May 9, 2019) (denying motion to dismiss in part)
- **TCPA / Compelling Arbitration:** borrower compelled to arbitrate TCPA and FCCPA claims against lender for calling his cell phone to collect consumer debt after request to stop; loan application and credit card agreement both contained arbitration provisions and borrower provided cell phone number on account applications – *Abellard v. Wells Fargo Bank, N.A.*, No. 19-cv-60099 (S.D. Fla. May 13, 2019) (granting motion to compel arbitration and dismissing case)
- **FCRA / Seven-Year Reporting Window:** date of entry of criminal charge, rather than date of dismissal, triggers the seven-year reporting window under the FCRA – *Moran v. Screening Pros, LLC*, No. 12-57246 (9th Cir. May 14, 2019) (reversing and remanding dismissal of FCRA and other CA statutory claims)
- **FDCPA / Limitations:** attorney sent restraining notice to bank erroneously listing plaintiff’s SSN and address and bank froze account. More than one year after account was frozen, plaintiff sued under the FDCPA and district court dismissed as time-barred. Claim arose when injury occurred—when account was frozen, and neither the “discovery rule” nor equitable tolling apply – *Benzemann v. Houslanger & Assocs., PLLC*, No. 18-1162-cv (2d Cir. May 13, 2019) (affirming summary judgment for defendant because claim was time-barred)

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