

Real Property & Financial Services Update: Week Ending May 31, 2019

May 31, 2019

Real Property Update

- **Public Official Standing Doctrine:** county school district that benefited from ad valorem taxes charged by county could not challenge constitutionality of statutory tax exemption claimed by homeowners association - [The School District of Escambia Cnty., Fla. v. Santa Rosa Dunes Owners Ass'n, Inc.](#), No. 1D18-91 (Fla. 1st DCA May 30, 2019) (affirmed)
- **Foreclosure / Deficiency Judgment:** because borrowers were only constructively served with process, trial court lacked in personam jurisdiction necessary to enter deficiency judgment against borrowers - [Rosenhaim v HMC Assets, as Trustee](#), No. 5D18-1929 (Fla. 5th DCA May 31, 2019) (affirmed, with comment)
- **Insurance Contract / Consequential Damages:** insured permitted to pursue claim against insurer for lost rental income, even though policy provided for property damage coverage but not for lost rent - [Manor House LLC v. Citizens Prop. Ins. Corp.](#), No. 5D17-2841 (Fla. 5th DCA May 31, 2019) (reversing in part summary judgment in insurer's favor)

Financial Services Update

- **TCPA / Fax Advertisement:** unsolicited fax asking healthcare provider to verify information in sender's database was not an actionable advertisement, as it did not attempt to influence the purchasing decisions of any potential buyer, and did not encourage provider to influence the purchasing decisions or those of a third party - [Robert W. Mauthe, M.D., P.C. v. Optum Inc.](#), No. 18-2894 (3d Cir. May 28, 2019) (affirming dismissal)

- **TCPA / Art. III Standing & Class Certification:** applying *Spokeo* to conclude unwanted calls to residential numbers on Do Not Call registry received on multiple occasions satisfied Art. III, as § 227(c)(5) was enacted to protect particularized and concrete privacy interests; and upholding class certification because a plaintiff "is likely to be in the same position as a great many other people and can rely largely on common proof to make out his claim[]" - [Krakauer v. Dish Network, LLC](#), No. 18-1518 (4th Cir. May 30, 2019) (affirming \$61 million class action judgment)
- **FCRA / Consumer Reporting Agency:** to qualify as a consumer reporting agency, entity must intend the information it furnishes to constitute a "consumer report," as defined under 15 U.S.C. § 1681a(f) - [Kidd v. Thompson Reuters Corp.](#), No. 17-3550 (2d Cir. May 30, 2019) (affirming summary judgment in favor of defendant)
- **FDCPA / False or Misleading Representation:** collection letter that listed "total current balance" but did not state whether interest, late charges, or other charges were accruing did not violate 15 USC § 1692e because letter did not suggest amount owed was different than amount stated - [Bella v. Bureaus Invest. Grp. Portfolio No. 15 LLC](#), No. 17-cv-6115 (E.D.N.Y. May 30, 2019) (dismissing with prejudice)

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